SENATE.

MONDAY, *February 17, 1913.*

(Legislative day of Tuesday, February 11, 1913.)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

Mr. GALLINGER took the chair as President pro tempore under the order of the Senate of December 16, 1912.

CREDENTIALS.

Mr. BROWN. Mr. President, I have the honor to present the credentials of my successor, and I ask to have them read.

The PRESIDENT pro tempore. The credentials will be read.

The Secretary read the credentials of GEORGE W. NORRIS, chosen by the Legislature of the State of Nebraska a Senator from that State for the term beginning March 4, 1913, and they were ordered to be filed.

Mr. CATRON. Mr. President, I present the credentials of my colleague [Mr. FALL] and ask that they be read.

The PRESIDENT pro tempore. The credentials will be read.

The credentials of ALBERT BACON FALL, chosen by the Legislature of the State of New Mexico a Senator from that State for the term beginning March 4, 1913, were read and ordered to be filed.

Mr. CURTIS. Mr. President, I present the credentials of my successor.

The PRESIDENT pro tempore. The credentials will be read.

The credentials of WILLIAM H. THOMPSON, chosen by the Legislature of the State of Kansas a Senator from that State for the term beginning March 4, 1913, were read and ordered to be filed.

Mr. SMITH of Georgia presented the credentials of AUGUSTUS O. BACON, appointed by the governor of the State of Georgia a Senator from that State from the 4th day of March, 1913, until the next meeting of the legislature thereof, which were read and ordered to be filed.

COMMERCIAL AND AGRICULTURAL ORGANIZATIONS.

The PRESIDENT pro tempore laid before the Senate the following communication from the Secretary of Commerce and Labor, which was read:

DEPARTMENT OF COMMERCE AND LABOR,
Washington, February 15, 1913.

SIR: By direction of the President, and in conformity with Senate resolution No. 406 of December 12, 1912, I have the honor to transmit herewith lists of the commercial and agricultural organizations of the United States.

The list of the agricultural associations has been prepared through the courteous cooperation of the Department of Agriculture, at the request of the Secretary of this department.

The list of commercial organizations has been compiled in the Bureau of Foreign and Domestic Commerce of this department. That bureau in the exercise of its functions of promoting commerce and manufacture maintains close relations with those organizations throughout the United States which are engaged in promotive service for the commercial interests of their districts, and a record of the activities of these trade bodies is kept as a part of the current files of that office. Although this record was fairly complete, it has been supplemented as far as practicable in the time permitted, and the list which is transmitted herewith is believed to be a fairly complete one and to contain the names of practically all the commercial organizations in towns with 2,000 inhabitants or more. An acknowledgment should be made to a number of secretaries of important commercial organizations who have materially assisted the bureau in securing complete lists of associations in certain States.

As the value of the list of these organizations it is believed is greatly enhanced if the essential facts in regard to each association are also reported, there has been included as far as practicable with the list of names of commercial organizations herewith submitted a concise statement of the functions of each—its duties, income, number of members, special interests served, and the committees and bureaus under which this service is conducted. With this information, which has been recorded by the use of convenient symbols, it is possible for the business man to obtain a definite knowledge of the character of each trade body listed herewith.

Respectfully, CHARLES NAGEL, *Secretary.*

The PRESIDENT OF THE SENATE,
Washington, D. C.

(Inclosure No. 21167.)

Symbols are employed to indicate (1) the field of service of the respective local commercial organizations and (2) their special activities. Separate sets of symbols are used for this purpose, the first, or "A," series being given under the heading "Field of service," and the second, or "C," series under the heading "Remarks." The latter series indicates special activities of organizations directed by departments or committees. Following is a key to the various symbols:

FIELD OF SERVICE.

A1. Civic and industrial development of district.
A2. Interests of local retail merchants.
A3. Interests of local manufacturers of miscellaneous products.
A4. Civic improvements only.
A5. Interests indicated in title of organization or special service not indicated by preceding symbols.

SPECIAL ACTIVITIES.

C. Conventions.
CC. Foreign trade.
C1. Retail trade.
C2. Wholesale trade.
C3. Market quotations.
C4. Grain weighing and inspection.
C5. Charity investigations.
C6. Transportation.
C7. Classified library.
C8. Industrial.
C9. Local credits.
C10. Weekly journal.
C11. Monthly journal.
C12. Employment.
C13. Agriculture.
C14. Daily bulletin.
C15. Quarterly bulletin.
C16. Biweekly journal.

The PRESIDENT pro tempore. Without objection, the communication and accompanying papers will be referred to the Committee on Printing.

FINDINGS OF THE COURT OF CLAIMS.

The PRESIDENT pro tempore laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact and conclusion filed by the court in the following causes:

Kate P. Chesley, administratrix de bonis non cum testamento annexo of the estate of James A. Chesley, deceased (S. Doc. No. 1088); and

Washington Loan & Trust Co., administrator de bonis non cum testamento annexo of Edward S. Keyser, deceased (S. Doc. No. 1089).

The foregoing findings were, with the accompanying papers, referred to the Committee on Pensions and ordered to be printed.

MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE LEGARE.

Mr. TILLMAN. Mr. President, I wish to give notice that on March 1, 1913, I will ask the Senate to consider resolutions commemorative of the life and public character of GEORGE S. LEGARE, late a Representative in Congress from the State of South Carolina.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. BRANDEGEE. Mr. President, I wish to make a parliamentary inquiry as to whether any morning business is in order at the present time.

The PRESIDENT pro tempore. The present occupant of the chair is of the opinion that it would not be in order. The matter that was laid before the Senate was on the desk of the President pro tempore.

Mr. BRANDEGEE. The Senator from Kansas [Mr. CURTIS] last Friday afternoon gave notice that he would call up the District of Columbia appropriation bill this morning. At that time unanimous consent had been granted that we should proceed to vote not later than 4 o'clock to-day upon all amendments pending and upon the bill authorizing the construction of a dam across the Connecticut River. As Senators know, there are quite a number of amendments pending and they will need explanation. I wish to suggest to the Senator from Kansas if he does not think the District appropriation bill should be laid aside in time for Senators to explain their amendments, so that they may be voted upon intelligently.

Mr. CURTIS. I will state to the Senator that at 2 o'clock, if that will give sufficient time, and if the appropriation bill is not then completed, I will ask that it be temporarily laid aside.

Mr. BRANDEGEE. Of course I am ready to vote upon the bill and the amendments now, but if other Senators request the Senator from Kansas to lay the bill aside I hope he will concur in the request.

Mr. CURTIS. I will gladly do so.

Mr. SMITH of Arizona. May I interrupt the Senator from Kansas?

Mr. CURTIS. Certainly.

Mr. SMITH of Arizona. Mr. President, I had expected to submit some observations on the pending bill and would prefer to do it now. I know of at least two other Senators who wish to occupy 30 or 40 minutes all told. I shall in the present condition of the bad cold I have ask the indulgence of the Senate to print many of the authorities, which are mere decisions of the courts, instead of reading them or having them read to the Senate. With the understanding that I can take the floor, say, at 2 o'clock, of course I shall yield that the appropriation bill may be proceeded with now.

Mr. CURTIS. I think the appropriation bill will be completed before 2 o'clock. If it is not, I will gladly consent to

lay it aside at that hour, or I will ask to have it laid aside before that hour if any Senator desires to take the floor on the pending bill.

Mr. SMITH of Arizona. With that understanding, I have no objection to the Senate proceeding with the appropriation bill.

Mr. CURTIS. I now move to take up the District of Columbia appropriation bill.

Mr. JONES. I simply desire to say that I wish to submit some observations on the bill relating to the Connecticut River, but I understand that the Senator from Kansas will be willing to yield at any time.

Mr. CURTIS. I said that I would yield at 2 o'clock, and I will yield at any time before 2 that any Senator desires.

Mr. JONES. With that understanding, I am willing that the Senator shall proceed with the appropriation bill.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the following bills:

S. 104. An act for the relief of Carl Krueger; and

S. 2733. An act for the relief of the estate of Almon P. Frederick.

The message also announced that the House had passed the following bills, with amendments, in which it requested the concurrence of the Senate:

S. 8178. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 8274. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 8275. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors; and

S. 8314. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 14053) to increase the pensions of surviving sailors of Indian wars in certain cases.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H. R. 2839. An act for the relief of William Hommelsberg;

H. R. 6793. An act for the relief of Charles A. Bess;

H. R. 8921. An act for the relief of William H. Seward;

H. R. 18727. An act for the relief of Lewis Wood;

H. R. 24296. An act for the relief of Alonzo D. Cadwallader;

H. R. 26648. An act for the relief of David Crowther;

H. R. 24661. An act for the relief of James Parsons;

H. R. 24942. An act for the relief of the administrator and heirs of John G. Campbell, to permit the prosecution of Indian depredation claims;

H. R. 28607. An act making appropriations for the Diplomatic and Consular Service for the fiscal year ending June 30, 1914;

H. R. 28672. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War and to widows of such soldiers and sailors; and

H. R. 28746. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War and to widows of such soldiers and sailors.

The message further transmitted to the Senate resolutions of the House on the life and public services of Hon. GEORGE S. NIXON, late a Senator from the State of Nevada.

The message also transmitted to the Senate resolutions of the House on the life and public services of Hon. JOHN GEISER MCHENRY, late a Representative from the State of Pennsylvania.

The message further transmitted to the Senate resolutions of the House on the life and public services of Hon. RICHARD E. CONNELL, late a Representative from the State of New York.

The message also transmitted to the Senate resolutions of the House on the life and public services of Hon. WILLIAM W. WEDEMEYER, late a Representative from the State of Michigan.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore and delivered to the committee to be presented to the President of the United States:

S. 186. An act for the relief of Francis Grinstead, alias Francis M. Grinstead;

S. 3873. An act for the relief of Lewis F. Walsh;

S. 4030. An act for the relief of Sylvester W. Barnes;

S. 4043. An act divesting intoxicating liquors of their interstate character in certain cases;

S. 5262. An act for the relief of Sylvester G. Parker; and

H. R. 14053. An act to increase the pension of surviving soldiers of Indian wars in certain cases.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

Mr. CURTIS. I move that the Senate proceed to the consideration of House bill 28499, the District of Columbia appropriation bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 28499) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, which had been reported from the Committee on Appropriations with amendments.

Mr. CURTIS. I ask unanimous consent that the formal reading of the bill be dispensed with, that it be read for amendment, and that the committee amendments be considered first.

Mr. SMITH of Georgia. I object to that course. It seems to me that the wise way to handle a bill of this kind is to have it read paragraph by paragraph and allow Senate committee amendments and floor amendments to be offered as we dispose of a paragraph.

Mr. CURTIS. If the Senator objects, I will not press the request.

Mr. SMITH of Georgia. I object.

The PRESIDENT pro tempore. Objection is made, and the Secretary will proceed to read the bill.

Mr. SMITH of Georgia. I do not object to dispensing with the reading of the bill. I object to taking up the committee amendments first.

The PRESIDENT pro tempore. The bill will be read, and amendments will be considered as they are reached, either committee amendments or amendments offered by individual Senators.

The Secretary proceeded to read the bill.

The first amendment of the Committee on Appropriations was, under the head of "General expenses," on page 2, line 3, after the word "one" where it occurs the third time, to strike out "$1,300" and insert "$1,400," so as to make the clause read:

Executive office: Two commissioners, at $5,000 each; engineer commissioner, so much as may be necessary (to make salary $5,000); secretary, $2,400; assistant secretaries to commissioners—one $1,500, one $1,200; clerks—one $1,600, one $1,500, one $1,400, two at $1,200 each, one, who shall be a stenographer and typewriter, $1,000, one $840, one $720, one $600; messengers—one $600, one $480; stenographer and typewriter, $840; two drivers, at $600 each.

Mr. SMITH of Georgia. I understand that all these salaries are fixed by law. If I am right about that, I make the point of order that they can not be changed in this way.

Mr. CURTIS. This increase was made by the committee upon the recommendation of the Commissioners of the District of Columbia.

Mr. SMITH of Georgia. But that is not sufficient. If there is a general statute fixing a salary, it is a part of the organic law, and you can not change it in an appropriation bill. It takes a special statute to make the increase. I make the point of order that the proposed increases can not be made in this way.

Mr. CURTIS. Mr. President, I do not think the point of order is well taken. This is an item that was estimated for by the Commissioners of the District of Columbia, and it has been reported by one of the standing committees of the Senate. Therefore it is not subject to the point of order.

The PRESIDENT pro tempore. The Chair is of the opinion that the point of order is not well taken and will overrule the point of order. The question is on agreeing to the amendment of the committee.

Mr. SMITH of Georgia. I desire to make an objection to these increases. All through the bill there runs a systematic line of increases in the salaries. I believe that the expense of administration in this District has been just as great as it ought to be, and that this is not a proper time to increase the salaries.

The PRESIDENT pro tempore. Senators agreeing to the amendment of the committee will say "aye." [Putting the question.] The ayes appear to have it.

Mr. SMITH of Georgia. I call for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when Mr. BOURNE's name was called). I desire to state that my colleague [Mr. BOURNE] is detained on a joint committee between the two Houses upon official business.

Mr. CLARK of Wyoming (when his name was called). I have a general pair with the senior Senator from Missouri [Mr. STONE]. I withhold my vote in the absence of that Senator.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON]. He is not present, and I withhold my vote.

Mr. SMITH of South Carolina (when his name was called). I have a general pair with the Senator from Delaware [Mr. RICHARDSON]. He is not present, and therefore I withhold my vote.

Mr. WILLIAMS (when his name was called). I ask if the Senator from Pennsylvania [Mr. PENROSE] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. WILLIAMS. I have a pair with him, and will therefore withhold my vote.

The roll call was concluded.

Mr. SMITH of Michigan. I am paired with the Senator from Missouri [Mr. REED]. I transfer that pair to the Senator from Oregon [Mr. BOURNE] and vote. I vote "yea."

Mr. SMITH of South Carolina. I transfer my general pair with the Senator from Delaware [Mr. RICHARDSON] to the Senator from Oklahoma [Mr. GORE] and vote. I vote "nay."

The result was announced—yeas 43, nays 28, as follows:

YEAS—43.

Bradley	Cummins	McCumber	Root
Brandegee	Curtis	McLean	Smith, Ariz.
Bristow	Dillingham	Martine N. J.	Smith, Md.
Brown	du Pont	Nelson	Smith, Mich.
Burnham	Fall	Newlands	Smoot
Burton	Gallinger	Oliver	Stephenson
Catron	Gamble	Page	Sutherland
Chamberlain	Guggenheim	Paynter	Swanson
Clark, Wyo.	Jackson	Percy	Townsend
Crane	Jones	Perkins	Wetmore
Crawford	Lodge	Poindexter	

NAYS—28.

Ashurst	Gardner	Myers	Smith, Ga.
Bacon	Gronna	O'Gorman	Smith, S. C.
Brady	Johnson, Me.	Overman	Stone
Bryan	Johnston, Ala.	Pomerene	Thomas
Clarke, Ark.	Kenyon	Sheppard	Thornton
Culberson	Kern	Shively	Tillman
Fletcher	Lea	Simmons	Webb

NOT VOTING—24.

Bankhead	Cullom	La Follette	Reed
Borah	Dixon	Lippitt	Richardson
Bourne	Foster	Martin, Va.	Warren
Briggs	Gore	Massey	Watson
Chilton	Hitchcock	Owen	Williams
Clapp	Kavanaugh	Penrose	Works

So the amendment of the committee was agreed to.

The reading of the bill was resumed, on page 2, line 3, and the Secretary read as follows:

Purchasing division: Purchasing officer, $3,000; deputy purchasing officer, $1,600; computer, $1,440; clerk, $1,500; clerks—one $1,300.

Mr. SWANSON. On page 2, line 13, after the word "one," I move to strike out the sum "$1,300" and to insert in lieu thereof "$1,450."

Mr. President, I wish to say in connection with this amendment that the District Commissioners have repeatedly recommended that this salary be fixed in accordance with my amendment. The committee in the House of Representatives examined the matter and reported it at that sum, but it went out in the House on a point of order. This is one clerk who has been isolated; he does the same work as do the other clerks in that office but gets only $1,300. By some past legislation, which I can not understand, he has not been promoted with the others. It seems to me to be an act of justice and equality that the amendment should carry.

Mr. CURTIS. Mr. President, the increase was recommended by the commissioners, and, so far as I am personally concerned, I have no objection to the amendment. However, this amendment was not agreed to by the committee.

The PRESIDENT pro tempore. The question is upon the amendment.

Mr. SMITH of Georgia. Mr. President, all through this bill run increases; all through this bill are amendments from the committee which, I think, involve changes that will cause large outlays of money. I am not objecting to these small increases one by one on account of simply the two or three cases that first appear, but my objection is to the increase of the appropriation which the amendments suggested by the Senate committee will provide. I think that it is a mistake, especially at this time, when there is to be a change of the administration of the District, to increase these salaries. I think we ought to hold down the expense of administering the affairs of the District. I do not think the appropriations contained in the bill, a number of them suggested by amendments which will be reached later on, ought to be made. My objection now and my resistance of these particular items of increase have not reference so much to those items, but are made to emphasize my objection to practically all of the increases of expenditure that the amendments from the Senate committee will provide.

Mr. CURTIS. Mr. President, I want to state for the committee that in this bill there are fewer increases than in any bill that has ever heretofore been reported from the Committee on the District of Columbia. There was no increase made until after a very careful study of the estimates; there was no increase made that did not meet the approval of all of the members of the committee who were present.

Mr. CLARKE of Arkansas. May I ask the Senator from Kansas a question?

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Arkansas?

Mr. CURTIS. I do.

Mr. CLARKE of Arkansas. I wish to ask the Senator whether this particular item has been estimated for or was recommended by a standing committee?

Mr. CURTIS. This item has been estimated for.

Mr. CLARKE of Arkansas. Then, why did not the committee include it in the bill as reported to the Senate?

Mr. CURTIS. As I stated a moment ago, the committee made just as few increases as possible, and thought that this one might be left out, because there were other employees similarly situated who would be entitled to the increase if granted in this case. We thought those whose salaries we reported to increase were more entitled to increases than the one proposed to be increased by the amendment of the Senator from Virginia.

Mr. CLARKE of Arkansas. Did I understand the Senator from Kansas correctly, then, when he said he accepted this amendment, so far as he might do so?

Mr. CURTIS. I said that, so far as I was personally concerned, I would not object to it; that it was estimated for. I did not make a point of order against it, because the point of order would not lie. Personally, I have no objection to the increase in this one case.

Mr. CLARKE of Arkansas. I supposed that the Senator was in charge of the bill and was sustaining the policy outlined by the committee when they reported the bill and omitted to recommend this increase.

Mr. CURTIS. I simply expressed my personal feeling in what I said.

Mr. SMOOT. Mr. President, I desire to call the Senator's attention to the fact that the increase was estimated for, as stated by the Senator from Kansas. It was also reported by the Committee on Appropriations of the House, but went out on a point of order in that body.

Mr. CLARKE of Arkansas. Never mind about its historical position before the Senate. What about the merits of the particular item?

Mr. SMOOT. The subcommittee, after considering the statement made by the commissioners as to whether the salary should be increased, decided that it should not and reported it at the present rate as provided by law—$1,300.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Virginia [Mr. SWANSON].

The amendment was rejected.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 2, line 15, after the word "storekeeper," to strike out "$900" and insert "$1,000," so as to read:

Purchasing division: Purchasing officer, $3,000; deputy purchasing officer, $1,600; computer, $1,440; clerk, $1,500; clerks—one $1,300, 6 at $1,200 each, 3 at $900 each, 6 at $720 each; inspector of fuel, $1,500; assistant inspector of fuel, $1,100; storekeeper, $1,000.

Mr. SMITH of Georgia. I desire to ask for the yeas and nays on that amendment.

The PRESIDENT pro tempore. The Senator from Georgia demands the yeas and nays.

The yeas and nays were ordered.

Mr. OLIVER obtained the floor.

Mr. CRAWFORD. I ask that the amendment be stated.

The PRESIDENT pro tempore. The Senator from Pennsylvania first addressed the Chair.

Mr. OLIVER. I should like also to have the amendment stated.

The PRESIDENT pro tempore. The amendment will be again stated.

The SECRETARY. On page 2, line 15, after the word "storekeeper," the committee reported to strike out "$900" and to insert in lieu thereof "$1,000."

Mr. CURTIS. Mr. President, by unanimous consent, I should like to state what the District Commissioners said in reference to the matter.

The PRESIDENT pro tempore. The Senator does not need to ask unanimous consent. The Senator will proceed.

Mr. CURTIS. The Commissioners of the District of Columbia in regard to this matter say:

The duties of this position require a man of high integrity, one of good judgment, and with a general knowledge of the relative qualities of the various supplies furnished the District government, as upon the incumbent devolves the duty of the custody of all samples submitted by bidders; this duty is particularly onerous at the time annual bids are received on the more than 5,000 items of general supplies. After samples are accepted and used as the standard of qualities of the supplies that are to be furnished under respective contracts, it is his duty, upon request of the interested department, to compare all deliveries with the accepted samples, for the purpose of seeing that the supplies furnished equal the contract quality. He is also charged with the management of the storeroom of stationery and other supplies which is maintained in this office and from which are issued such supplies used by offices in the District Building. The person filling this position is not only required to receive and issue stock, but in addition is also required to do all the clerical work incident to the same, such as keeping record of receipts and issues and making deliveries to departments, renewing the stock as it becomes depleted, etc.

Mr. OLIVER. Mr. President, as a member of the subcommittee, I want to say that if I have any objection to the changes made by the subcommittee in the bill it is because they have not made sufficient advances in small salaries. They have made practically none in the larger salaries, and what advances they have granted have been to men who are underpaid. After hearing what has been read by the Senator from Kansas I say that I would be ashamed to vote against this advance; and, as an employer of men all my life, I would be ashamed in my private establishment to employ a man to perform such duties as this man performs and pay him only the salary that is provided for in this bill.

The cost of living has greatly advanced, and the small salaries have not advanced in proportion. I say that we, as lawmakers and fixers of salaries, ought to consider what it costs a man to live in these days and to grant him an advance, if not commensurate, at least to provide something to correspond to the increase which is involved in his cost of living from day to day.

Mr. SMITH of Maryland. Mr. President, as a member of the subcommittee, I want to say that we scrutinized these recommendations very carefully, and I think I can say that, if Senators will compare this bill with other District of Columbia appropriation bills which have been passed by the Senate, they will find fewer increases than in any bill for many years. So far as an increase of salary is concerned, I do not think it is anything out of order. We find it in our private business, we find it in the case of corporations employing men; and why is it that the men employed by the Government, who receive these small salaries, the increase of which is recommended by the departments, and in this case recommended by the commissioners, shall not be considered by the committee? I see no reason why they should not be considered at this time as well as at any other time, even if there is going to be a new administration; and so I hope that these small increases will not be refused by the Senate. I do not think they will amount in all to $10,000.

Mr. SMITH of Georgia. Mr. President, the reasons presented by the Senator from Kansas [Mr. CURTIS], by the Senator from Pennsylvania [Mr. OLIVER], and by the Senator from Maryland [Mr. SMITH] in this particular instance appeal to me, and if the order for the yeas and nays may be vacated by unanimous consent, I am willing to have that done and yield on this question. The important matters that I have in view come in a little later.

The PRESIDENT pro tempore. In the absence of objection, the ordering of the yeas and nays will be vacated.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 2, line 16, after the word "driver," to strike out "$480" and insert "$600," so as to read "driver, $600."

The amendment was agreed to.

The next amendment was, on page 3, line 1, after the word "one," where it occurs the first time, to strike out "$1,500" and insert "$1,800," so as to make the clause read:

Building inspection division: Inspector of buildings, $3,000; principal assistant inspector of buildings, $1,800; assistant inspectors of buildings—11 at $1,200 each; fire-escape inspector, $1,400; temporary employment of additional assistant inspectors for such time as their services may be necessary, $3,000; civil engineers or computers—1, $1,800; 1, $1,500; chief clerk, $1,500; clerks—1 at $1,050, 1 at $1,000, 1 who shall be a stenographer and typewriter, $1,000, 1 at $900; messenger, $480; assistant inspector, $1,500.

The amendment was agreed to.

The next amendment was, on page 3, line 20, after the word "necessary," to strike out "$1,700" and insert "$2,400," so as to read:

Plumbing inspection division: Inspector of plumbing, $2,000; principal assistant inspector of plumbing, $1,550; assistant inspectors of plumbing—1 at $1,200, 4 at $1,000 each; clerks—1 at $1,200, 1 at $900; temporary employment of additional assistant inspectors of plumbing and laborers for such time as their services may be necessary, $2,400.

The amendment was agreed to.

The next amendment was, on page 4, line 4, after the words "In all," to strike out "$114,510" and insert "$115,830," so as to make the clause read:

In all, $115,830.

The amendment was agreed to.

Mr. CURTIS. Mr. President, to save time, I ask unanimous consent that when the bill is completed the Secretary may be permitted to correct the totals.

The PRESIDENT pro tempore. Without objection, that order will be made.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 5, line 15, after the words "assistant cashier," to strike out "$1,400" and insert "$1,500," and in line 18, after the words "in all," to strike out "$21,700" and insert "$21,800," so as to make the clause read:

Collector's office: Collector, $4,000; deputy collector, $2,000; cashier, $1,800; assistant cashier, $1,500; bookkeeper, $1,600; clerks—3 at $1,400 each, 1, $1,200, 1, $1,000, 3 at $900 each; clerk and bank messenger, $1,200; messenger, $600; in all, $21,800.

The amendment was agreed to.

The next amendment of the Committee on Appropriations was, on page 5, line 23, after the words "chief clerk," to strike out "$2,250" and insert "$2,500," and on page 6, line 5, after the words "in all," to strike out "$43,656" and insert "$43,906," so as to make the clause read:

Auditor's office: Auditor, $4,000; chief clerk, $2,500; bookkeeper, $1,800; accountant, $1,500; clerks—3 at $1,600 each, 3 at $1,400 each, 1, $1,350, 4 at $1,200 each, 5 at $1,000 each, 1, $936, 2 at $900 each, 2 at $720 each; messenger, $600; disbursing officer, $3,000; deputy disbursing officers, $1,600; clerks—1, $1,200, 2 at $1,000 each, 1, $900; messenger, $480; in all, $43,906.

Mr. CURTIS. Mr. President, I move that that amendment be disagreed to.

The amendment was rejected.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 6, line 6, after the words "corporation counsel," to insert "to be appointed by the President, by and with the advice and consent of the Senate," so as to make the clause read:

Office of corporation counsel: Corporation counsel, to be appointed by the President, by and with the advice and consent of the Senate, $4,500; first assistant, $2,500; second assistant, $1,800; third assistant, $1,600; fourth assistant, $1,500; fifth assistant, $1,500; stenographers, one $1,200, one $840; clerk, $720; in all, $16,160.

Mr. SMITH of Georgia. Mr. President, I move to amend that amendment by adding, after the word "President," the words "of the United States," to distinguish it from the president of the board of commissioners.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 6, line 15, after the word "janitor," to strike out "$480" and insert "$600"; in line 16, after the word "janitor," to strike out "$360" and insert "$480," and in the same line, after the words "in all," to strike out "$3,360" and insert "$3,600," so as to make the clause read:

Coroner's office: Coroner, $1,800; morgue master, $720; assistant morgue master and janitor, $600; hostler and janitor, $480; in all, $3,600.

The amendment was agreed to.

The next amendment was, on page 7, after line 2, to insert:

For the erection of shelters on the open space at the intersection of Ohio and Louisiana Avenues with Tenth and Twelfth Streets, bounded by Tenth and Twelfth and B and Little B Streets NW., known and designated as the farmers' produce market, and the necessary paving in connection therewith, $32,000; and the limitation of 10 cents per day for each space at the above-mentioned market contained in the act of June 27, 1906, is hereby revoked, and the Commissioners of the District of Columbia are authorized to charge hereafter not to exceed 20 cents per day for each space in accordance with the provisions of the aforesaid act.

Mr. LODGE obtained the floor.

Mr. SMITH of Georgia. I desire to make the point of order that this is legislation. If the Senator from Massachusetts——

Mr. LODGE. I thought I was recognized. I did not mean to interfere with the Senator's remarks.

Mr. SMITH of Georgia. I hope the Senator will proceed.

Mr. LODGE. Mr. President, if I understand the situation of these proposed shelters, it is directly opposite the National Museum.

Mr. SMITH of Georgia. That is just the point I was about to make.

Mr. LODGE. That is a building containing collections of enormous value. It seems to me that fact in itself is an objec-

tion to establishing the hay market there permanently, if we can find some other position for it. Then I think it is proper to say that the Regents of the Smithsonian Institution were informed the other day that Mr. Freer, whose great collections have been made over to the United States, has increased his gift for the construction of a building to house his collections from $500,000 to $1,000,000. He is going to give this great building and these great collections to the United States. It is very much desired by the Regents of the Smithsonian Institution, and all who are connected with that portion of the affairs of the Government, to use that space, if possible, in the future for the construction of this great building, which undoubtedly will be a very handsome one, which is a gift to the people of the United States. I had hoped the committee would not press this amendment to make permanent the hay market at that point. It seems to me it might be put somewhere else.

Mr. SMITH of Georgia. Mr. President, I intended to make very much the same suggestion that has been made by the Senator from Massachusetts. I intended to add, also, that I had no idea that Congress would permit such a structure to remain there for any length of time if it should be put there. It would be an eyesore; it would be a serious interference with the improvements that have taken place and are to take place. Beyond any question, if built, the first thing Congress would do would be to order it torn down and removed. It is to just such waste of public moneys as this that I desire to urge objections.

Mr. SMOOT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from Utah?

Mr. SMOOT. I thought the Senator had concluded.

Mr. SMITH of Georgia. No. I desire to make the point of order.

The PRESIDENT pro tempore. The Senator from Georgia makes the point of order against the item that it is general legislation.

Mr. SMITH of Georgia. If there is any doubt about it, Mr. President, I desire to submit precedents in support of the point of order.

The PRESIDENT pro tempore. The Chair thinks it is not necessary.

Mr. SMOOT. Mr. President, I desire to state that the first part of the amendment is not subject to a point of order, because it has been regularly estimated for. I believe myself that the latter part, from "$32,000," on page 7, line 8, down to and including the word "Act," in line 14, is no doubt subject to a point of order.

The committee considered this matter very carefully. I will state frankly that there was doubt in the minds of the committee as to whether or not it was a proper provision to put in. About 260 wagons come to this market every day, and the produce is distributed from them. I am told by the commissioners that sometimes there have been as many as 545 wagons down there.

The commissioners have thought a great deal over the problem of locating this market at some point that would be a central point, not only for the farmers, but for the people of the District who wish to buy their produce.

I believe myself that if this market is to be removed, we should spend no more money there; but if we are going to continue it in the place where it is at present, the expenditure asked for is absolutely necessary. Every Senator who has ever visited this market knows that the present condition is a disgrace to the District of Columbia. It is a dirty place; it is kept in such a way that it is unwholesome and unclean, and it is an eyesore before the National Museum.

I am not going to object if the whole thing goes out on a point of order; but I wished to state that much, as far as the committee were concerned, as to why they put it in.

The PRESIDENT pro tempore. The point of order made by the Senator from Georgia [Mr. SMITH] is sustained. The Secretary will proceed with the reading of the bill.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 7, after line 20, to insert:

Fish wharf and market: Market master and wharfinger, who shall have charge of the landing of vessels, the collection of wharfage and dockage rentals, and the collection of rents for fish houses at the municipal fish wharf and market hereinafter established, for not exceeding 16 months at the rate of $75 per month, beginning March 1, 1913, $1,200; assistant market master, who shall also act as laborer, for the same period, at the rate of $50 per month, not exceeding $800; in all, $2,000, to be immediately available; and the Commissioners of the District of Columbia are authorized and directed in the name of the District of Columbia to take over, exclusively control, regulate, and operate as a municipal fish wharf and market, the water frontage on the Potomac River lying south of Water Street, between Eleventh and Twelfth Streets, including the buildings and wharves thereon, and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia; and said commissioners shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the Treasury, one-half to the credit of the United States and one-half to the credit of the District of Columbia, and to make and amend, from time to time, all such regulations as they may deem proper for the control, regulation, and operation of said municipal fish wharf and market; and all leases, subleases, and other private rights of occupancy in and to any or all of said property are terminated on, from, and after March 15, 1913; and all laws and parts of laws requiring the advertisement and sale of rights and privileges for a fish wharf or dock, and all laws or parts of laws inconsistent with the provisions hereof are repealed.

The amendment was agreed to.

The next amendment was, on page 11, line 5, after the word "repairs," to strike out "$1,600" and insert "$1,800," and in line 9, after the words "in all," to strike out "$26,050" and insert "$26,250," so as to make the clause read:

Municipal architect's office: Municipal architect, $3,600; superintendent of construction, $2,000; chief draftsman, $1,700; draftsmen—one $1,400, one $1,300; heating, ventilating, and sanitary engineer, $2,000; superintendent of repairs, $1,800; assistant superintendent of repairs, $1,200; boss carpenter, boss tinner, boss painter, boss plumber, boss steam fitter, five in all, at $1,200 each; boss grader, $1,000; machinist, $1,200; clerks—one $1,050, one $620; copyist, $840; driver, $540; in all, $26,250.

The amendment was agreed to.

The next amendment was, on page 12, line 11, after the word "surveyor," to strike out "$1,800" and insert "$2,000," and in line 17, after the words "in all," to strike out "$25,725" and insert "$25,925," so as to make the clause read:

Surveyor's office: Surveyor, $3,000; assistant surveyor, $2,000; clerks—1 at $1,225, 1 at $975, 1 at $675; 3 assistant engineers, at $1,500 each; computer, $1,200; record clerk, $1,050; inspector, $1,200; draftsmen—1 $1,225, 1 $900; assistant computer, $900; 3 rodmen, at $825 each; chainmen—3 at $700 each, 2 at $650 each; computer and transitman, $1,200; in all, $25,925.

The amendment was agreed to.

The next amendment was, on page 12, line 25, after the word "Library," to strike out "including Takoma Park branch"; on page 13, line 3, after "$1,000," to insert "one in charge of periodicals, $1,000"; in line 4, after "$1,000," to strike out "six" and insert "five"; in line 5, before the word "at," to strike out "including one in charge of Takoma Park branch"; in line 5, after the word "five," to strike out "including one for the Takoma Park branch"; in line 6, after the word "three," to strike out "including one in charge of Takoma Park branch"; in line 16, after the words "in all," to strike out "$41,900" and insert "$42,180"; and in line 18, after the word "open," to strike out "on the same days and during the same hours" and insert "at least seven hours per day on the same week days," so as to make the clause read:

Free Public Library: Librarian, $3,500; assistant librarian, $1,500; chief circulating department, $1,200; children's librarian, $1,000; librarian's secretary, $900; reference librarian, $1,000; assistants—1 $1,000, 1 in charge of periodicals, $1,000, 5 at $720 each, 5 at $600 each, 3 at $540 each, 3 at $480 each; copyist, $480; classifier, $900; cataloguers—1 $720, 1 $600, 2 at $540 each; stenographer and typewriter, $720; attendants—6 at $540 each, 5 at $480 each; collator, $480; 2 messengers, at $480 each; 10 pages, at $360 each; 2 janitors, at $480 each, 1 of whom shall act as night watchman; janitor of Takoma Park branch, $360; engineer, $1,080; fireman, $720; workman, $600; library guard, $720; 2 cloakroom attendants, at $360 each; 6 charwomen, at $180 each; in all, $42,180; and hereafter the Takoma Park branch shall be kept open at least seven hours per day on the same week days as the Free Public Library shall be open to the public.

The amendment was agreed to.

The next amendment was, on page 14, line 3, after the word "Library," to strike out "including Takoma Park branch," so as to make the clause read:

Miscellaneous, Free Public Library: For books, periodicals, and newspapers, including payment in advance for subscriptions to periodicals, newspapers, subscription books, and society publications, $7,500.

The amendment was agreed to.

The next amendment was, on page 14, after line 14, to insert:

Takoma Park branch: For maintenance, employment of branch librarian and assistants, substitutes, and other special and temporary service, extra service for Sundays and holidays, purchase of books, newspapers, and periodicals, including payment in advance for subscriptions to newspapers and periodicals, binding, fuel, lighting, repairs, including the employment of personal services therefor, and other contingent expenses, the rates of compensation of all employees to be determined by the board of library trustees, $4,000.

The amendment was agreed to.

The next amendment was, on page 14, after line 23, to insert:

National Library for the Blind: For aid and support of the National Library for the Blind located at 1729 H Street NW., $5,000.

Mr. CURTIS. I move to strike out the word "National" before "Library," where it occurs the second time.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, under the head of "Contingent and Miscellaneous Expenses," on page 15, line 15, after the words

"Board of Charities," to strike out "including an allowance to the purchasing officer and to the secretary of the Board of Charities of not exceeding $300 each per annum for maintenance of vehicle for use in the discharge of their official duties," so as to read:

For contingent expenses of the government of the District of Columbia, namely: For printing, checks, books, law books, books of reference, and periodicals, stationery; detection of frauds on the revenue; surveying instruments and implements; drawing materials; binding, rebinding, repairing, and preservation of records; maintaining and keeping in good order the laboratory and apparatus in the office of the inspector of asphalt and cement; damages; livery, purchase, and care of horses and carriages or buggies and bicycles not otherwise provided for; horseshoeing; ice; repairs to pound and vehicles; use of bicycles by inspectors in the engineer department not to exceed $800; and other general necessary expenses of District offices, including the sinking-fund office, Board of Charities, excise board, personal-tax board, harbor master, health department, surveyor's office, superintendent of weights, measures, and markets office, and department of insurance, and purchase of new apparatus and laboratory equipment in office of inspector of asphalt and cement, $36,000; and the commissioners shall so apportion this sum as to prevent a deficiency therein.

The amendment was agreed to:

The next amendment was, on page 16, after line 18, to insert:

Telephones connected with the system of the Chesapeake & Potomac Telephone Co. may be maintained in the residences of the superintendent of the water department, superintendent of sewers, secretary of the Board of Charities, health officer, chief engineer of the fire department, and superintendent of police, of the District of Columbia, under appropriations contained in this act.

The amendment was agreed to.

The next amendment was, on page 19, line 20, before the word "materials," to strike out "other"; in line 24, before the word "under," to strike out "Bureau of Standards" and insert "testing bureaus of the Federal Government," so as to make the clause read:

Hereafter materials for fireproof buildings, other structural materials, and all materials other than fuel purchased for and to be used by the government of the District of Columbia, and necessary to be tested, shall be tested by the testing bureaus of the Federal Government under the same conditions as similar testing is required to be done for the United States Government.

Mr. CURTIS. In line 22, I move to amend the amendment by inserting after the word "shall" and before the words "be tested" a comma and the words "if requested by the commissioners."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 22, after line 2, to insert:

Repaving with asphalt or asphalt block the roadway of C Street NE. from First Street to Fourth Street, 32 feet wide, $12,000.

The amendment was agreed to.

The next amendment was, on page 22, after line 5, to insert:

For paving Twenty-third Street from Kalorama Road to S Street with concrete pavement, including curb on both sides where not already set, for a roadway 24 feet wide, $8,000.

The amendment was agreed to.

The next amendment was, on page 22, after line 9, to insert:

For constructing a suitable viaduct and bridge to carry Benning Road over the tracks of the Pennsylvania, Baltimore & Washington Railroad Co. and of the Baltimore & Ohio Railroad Co., in accordance with plans approved by the Commissioners of the District of Columbia, to be available until expended, $110,000; and authority is hereby given to purchase or condemn, in accordance with existing law, any land necessary to widen said Benning Road so as to permit the construction of said viaduct and bridge in accordance with the approved plans, as above, the cost of said purchase or condemnation to be paid out of this appropriation, and the said commissioners are hereby authorized to make the necessary expenditures for the construction of said viaduct and bridge and approaches under the like conditions prescribed for the expenditure of the appropriation for a subway and bridge at Cedar Street, contained in the act of May 18, 1910, making appropriations for the expenses of the District of Columbia for the fiscal year 1911: *Provided*, That the cost of constructing said viaduct and bridge within the limits of the rights of way of said Philadelphia, Baltimore & Washington Railroad Co. and the Baltimore & Ohio Railroad Co. shall be borne and paid, half by said railroad companies in proportion to the widths of their respective rights of way and half by the United States and the District of Columbia, as provided in section 10 of an act entitled "An act to provide for a union railroad station in the District of Columbia, and for other purposes," approved February 28, 1903, and said sums shall be paid by said companies to the Treasurer of the United States, one half to the credit of the District of Columbia and the other half to the credit of the United States, and the same shall be valid and subsisting liens against the franchises and property of said Philadelphia, Baltimore & Washington Railroad Co. and the Baltimore & Ohio Railroad Co., respectively, and shall be a legal indebtedness of said companies in favor of the District of Columbia, jointly for its use and the use of the United States as aforesaid, and the said lien or liens may be enforced in the name of the District of Columbia by bill in equity brought by the commissioners of said District in the supreme court of said District, or by any other lawful proceedings against the said Philadelphia, Baltimore & Washington Railroad Co. or said Baltimore & Ohio Railroad Co., or both, and any relocation in the line or change in the grade of the tracks of the Washington Railway & Electric Co. necessary to permit the completion in accordance with approved plans of the viaduct and bridge and approaches herein provided for shall be made by and at the cost of said railway company, and in the event of said railway company failing or refusing to do such work the same shall be done by the Commissioners of the District of Columbia, the cost to be paid from the appropriation for said bridge and viaduct and collected from said street railway company in the manner provided for in section 5 of "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878, and paid into the Treasury, one-half to the credit of the United States and one-half to the credit of the District of Columbia.

The amendment was agreed to.

The reading was continued to line 23, on page 25.

Mr. CURTIS. After line 23, I move to insert the following:

The Commissioners of the District of Columbia are hereby authorized and directed to strike from the plan of the permanent system of highways for the District of Columbia Crittenden Street NW., between Iowa Avenue and Seventeenth Street, and to omit the said street between the limits named from any future subdivision of the parcel of ground through which the said Crittenden Street runs.

I wish to state that I offer the amendment at this time because I promised to bring it to the attention of the committee, but failed to do so, for I thought there was nothing from the commissioners on the subject. I afterwards found that I had a letter from the commissioners recommending it and it had been reported by the Committee on the District of Columbia and passed the Senate. Therefore I offer the amendment in the Senate.

Mr. SMITH of Georgia. I make the point of order that that is undoubtedly new legislation.

Mr. CURTIS. I think it will be subject to the point of order on the ground that it is not estimated for and it is new legislation.

Mr. SMITH of Georgia. And also that it is new legislation.

The PRESIDENT pro tempore. The point of order is sustained on the ground that it is general legislation.

The reading of the bill was resumed.

The next amendment was, on page 26, line 8, after the word "streets," to insert "to be disbursed and accounted for as 'Construction of suburban roads and suburban streets,' and for that purpose shall constitute one fund," so as to make the clause read:

Construction of suburban roads: For construction of suburban roads and suburban streets, to be disbursed and accounted for as "Construction of suburban roads and suburban streets," and for that purpose shall constitute one fund, as follows.

Mr. SMITH of Georgia. I wish to ask the chairman of the subcommittee just what that is for. I do not understand it.

Mr. CURTIS. That is put in so that they may keep all accounts on that subject together and simply have one separate account for suburban roads.

Mr. SMITH of Georgia. It has no bearing whatever upon the proposed change charging a part of the expense of building these roads against the property holders?

Mr. CURTIS. It has not.

The amendment was agreed to.

The next amendment was, on page 27, after line 17, to insert:

Northwest, Kalmia Street, end of macadam to Rock Creek Park, grade and improve, $10,200.

The amendment was agreed to.

The next amendment was, on page 27, after line 19, to insert:

Northwest, Sherman Avenue, Florida Avenue to Columbia Road, improve, $25,000.

Mr. SMITH of Georgia. I desire to ask the Senator in charge of the bill whether these road extensions are included in general legislation already adopted?

Mr. CURTIS. They are carrying out a part of the plan adopted for street improvement which was recommended by the commissioners. A great many more were recommended than we put in.

Mr. SMITH of Georgia. If they are simply recommended and if there has been no legislation establishing these extensions, I make the point of order against the amendment.

Mr. CURTIS. The commissioners, of course, have the authority under the law to recommend the improvement of streets whenever deemed necessary. The committee has inserted the items upon their recommendation.

Mr. SMOOT. All these are highways now, and they have been established by law.

Mr. CURTIS. Yes; by law.

Mr. SMOOT. This is an appropriation for repairs.

Mr. CURTIS. And for grading and paving.

Mr. SMOOT. And the items are estimated for. I will state to the Senator, however, that in footing them all up there is a little more than the estimate called for—a few thousand dollars more.

Mr. SMITH of Georgia. There is an increase of $19,000 by the Senate committee on these streets, I understand.

Mr. CURTIS. The bill carries some $90,000 more than the House allowed for that purpose and is some $30,000 in excess of the amount estimated in gross sum; but we thought in conference we could determine those that needed paving most and reduce those amounts. We thought that was better than to pick them out, because in the House they had very long and

extensive hearings on these streets, and we did not. We put them in with that object in view. They are not for new streets.

Mr. SMITH of Georgia. It is my understanding of the rule that a street can not be extended in an appropriation bill.

Mr. CURTIS. These are not——

Mr. SMITH of Georgia. Let me finish. A street can not be extended or laid out in an appropriation bill.

Mr. CURTIS. It is not the object to lay out any new streets. I misunderstood the Senator's question. This is only to improve existing streets. These are merely improvements on existing streets. No new streets are laid out.

Mr. SMITH of Georgia. Then the Senator did not understand my question.

Mr. CURTIS. I misunderstood the Senator's question.

The PRESIDENT pro tempore. Is the point of order withdrawn?

Mr. SMITH of Georgia. It is withdrawn.

The amendment was agreed to.

The next amendment was, on page 27, after line 21, to insert:

Northeast. Franklin Street, Twenty-second Street eastward, grade and improve, $5,500.

The amendment was agreed to.

The next amendment was, on page 27, after line 23, to insert:

Northeast. Thirteenth Street, Rhode Island Avenue to Franklin Street, grade, $3,400.

The amendment was agreed to.

The next amendment was, at the top of page 28, to insert:

Northwest. For paving, with asphalt, Connecticut Avenue NW., between Calvert Street and the north end of the Connecticut Avenue Bridge, $2,800.

The amendment was agreed to.

The next amendment was, on page 28, after line 3, to insert:

Northeast. Hamlin Street, Twelfth to Thirteenth Streets, grade, $4,450.

The amendment was agreed to.

The next amendment was, on page 28, after line 5, to insert:

Northwest. Chesapeake Street, Wisconsin Avenue to River Road, grade and improve, $3,000.

The amendment was agreed to.

The next amendment was, on page 28, after line 7, to insert:

Northwest. Illinois Avenue, Kennedy Street to Ingraham Street, and Kennedy Street, Ninth Street to Georgia Avenue, grade and improve, $8,700.

The amendment was agreed to.

The next amendment was, on page 28, after line 10, to insert:

Northwest. Eighth Street, Jefferson to Longfellow Streets, grade and improve, $2,300.

The amendment was agreed to.

The next amendment was, on page 28, after line 12, to insert:

Northwest. V Street, Flagler Place to First Street, pave (30 feet), $3,800.

The amendment was agreed to.

The next amendment was, on page 28, after line 14, to insert:

Northwest. Nineteenth Street, Park Road to Newton Street, grade and improve, $3,500.

The amendment was agreed to.

The next amendment was, on page 28, after line 16, to insert:

Northwest. Macomb Street, Thirty-third to Thirty-sixth Streets, grade and improve, $8,500.

The amendment was agreed to.

The next amendment was, on page 28, after line 18, to insert:

Northwest. Kalorama Road, Twenty-third Street to Connecticut Avenue, pave (30 feet), $6,500.

The amendment was agreed to.

The next amendment was, on page 28, after line 20, to insert:

Northeast. Otis Street, Twelfth to Fourteenth Streets, grade, $4,200.

The amendment was agreed to.

The next amendment was, on page 28, line 23, after the words "In all," to strike out "$100,600" and insert "$192,450," so as to read:

In all, $192,450.

The amendment was agreed to.

Mr. SMITH of Michigan. I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. On page 29, after line 6, it is proposed to insert:

Hereafter Sixteenth Street NW. shall be known and designated as "Avenue of the Presidents."

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, at the top of page 31, to insert:

For new sidewalks and curbs around the Patent Office, $1,500.

The amendment was agreed to.

The next amendment was, on page 31, after line 2, to insert:

For replacing sidewalks and curbs around old Post Office Building, Seventh and Eighth, E and F Streets NW., $2,500.

The amendment was agreed to.

The next amendment was, on page 33, line 15, before the word "thereof," to strike out "one-third" and insert "15 per cent," so as to read:

And the Capital Traction Co. is authorized and required, within 90 days after said bridge shall be ready for the reception thereof, to remove its track from Twenty-sixth Street NW. between Pennsylvania Avenue and M Street and from M Street NW. between Twenty-sixth and Twenty-ninth Streets, and relocate the same in Pennsylvania Avenue and across the bridge herein provided for to a junction with their present tracks at Twenty-ninth Street and Pennsylvania Avenue NW., and to repave the said street space and the space on the M Street Bridge over Rock Creek from which said tracks are removed, all in accordance with plans to be approved by the Commissioners of the District of Columbia and to their satisfaction, and the same law now governing the paving and repairing of street pavements between rails and for a distance of 2 feet exterior thereto shall govern on the bridge herein provided for. And the Capital Traction Co. shall, after the completion of said bridge, pay into the Treasury of the United States, one-half to the credit of the District of Columbia and one-half to the credit of the United States, a portion of the total cost of said bridge and all incidental work thereto equal to 15 per cent thereof, and the same shall be a valid and subsisting lien against the franchises and property of said Capital Traction Co., and shall be a legal indebtedness of said company in favor of the District of Columbia.

Mr. SMITH of Georgia. Mr. President, I regard this modification of the bill as presented to us by the other House as a very serious one. I think the Capital Traction Co. ought to pay one-third of the expense of this bridge. It will be constructed, at least one-third for its benefit, and, as there seems to be no quorum present now——

Mr. CURTIS. Will the Senator from Georgia, before he asks for a quorum, permit me to have a letter read from the attorney of the Capital Traction Co., giving their side of this case? They made a very strong showing by letter before the committee.

Mr. SMITH of Georgia. But we know that the Capital Traction Co. has received enormous franchises——

Mr. CURTIS. That is true.

Mr. SMITH of Georgia. And that it has been given so much in this city, that it is as little as we can do to make it pay a fair proportionate part of an expenditure like this.

Mr. CURTIS. With the permission of the Senator, I ask that the letter which I send to the desk may be read by the Secretary.

The PRESIDENT pro tempore. Without objection, the letter will be read.

The Secretary read as follows:

THE CAPITAL TRACTION CO.,
Washington, D. C., February 17, 1913.

Hon. CHARLES CURTIS,
Chairman of Subcommittee of
Senate Committee on Appropriations.

DEAR SIR: I desire to protest against the enactment into law of the provision in bill (H. R. 28499) requiring the Captial Traction Co. to pay any part of the cost of the new bridge over Rock Creek at Pennsylvania Avenue, and as a basis for such exaction to compel the said company to remove its tracks from their present location and to run over said bridge. The Capital Traction Co.'s tracks are not on said bridge and the company has no desire to go on or over said bridge. Under its charter its tracks were run over said bridge and were accordingly operated from 1863 until 1875. In 1875 at the instance of the chief engineer of the Washington Aqueduct, Congress compelled the company to remove their railway tracks from the Pennsylvania Avenue Bridge over Rock Creek, then called the Washington Aqueduct Bridge, within one year from the date of said act; and by the same act required the company to lay their tracks along Twenty-sixth Street from Pennsylvania Avenue to M Street north, and thence along M Street into Georgetown to connect with their tracks on M Street. The requirements of this act were complied with by the company, and all the expense of relocating in order to go over M Street Bridge as required was borne the company. About 1890, when the company were contemplating the substitution of cable construction for horse-car service, in order to avoid the difficulties of cable construction at Twenty-sixth and M Streets, it applied to Congress for the privilege of returning to the Pennsylvania Avenue or Aqueduct Bridge, and offered to pay for any needed strengthening of the bridge for its accommodation with the cable construction. An act was introduced accordingly, Senate bill 4594, December 10, 1890, but this legislation failed of enactment and instead, by a provision of the District appropriation bill approved July 14, 1892, the company was required to repair the bridge across Rock Creek at M Street, at a cost not exceeding $10,000, and this repair (which was practically the rebuilding of said bridge) was under such compulsion done by the company.

When there was a reason and an advantage to the company for straightening its route and running over the Pennsylvania Avenue or Aqueduct Bridge, the right to do so was refused. Now, when the underground electric construction has superceded the cable construction, and the difficulties growing out of the angle or curve at Twenty-sixth and Pennsylvania Avenue no longer effect detrimentally the company by reason of the substitution of the underground system, it is sought by the pending act to compel us to remove from the M Street Bridge, practically built at the expense of the Capital Traction Co., to abandon its tracks down Twenty-sixth Street and on M Street approaching said M Street Bridge, and to remove to the Pennsylvania Avenue Bridge, for the purpose of giving color to an enforced contribution to the cost of building this new bridge. Not only are we required to lose what we have expended on the M Street Bridge and its approaches, but we have to build approaches to the Pennsylvania Avenue Bridge at a large cost and for no benefit whatever to the company.

We do not believe these facts were understood when this item was inserted in the bill by the House committee. No notice or knowledge of the intention to insert this provision was given to the company and, accordingly, no opportunity of making a statement afforded. Because of the pressure upon the Senate committee no hearings were had, and the only communication made by the company was a letter addressed to the subcommittee.

To compel the company to pay in part for this bridge when they are not an occupant of said bridge and do not desire to become an occupant of the bridge, and to undergo the expense that such removal would entail, comes very near to a violation of the rights of property, which are safeguarded by the Constitution and by law.

It is earnestly urged that this wrong be avoided, and I ask that when this item is discussed in the Senate that the facts herein stated shall be disclosed.

Respectfully submitted.

GEORGE E. HAMILTON, *President.*

Mr. CURTIS. Mr. President, I should like to state further to the Senator from Georgia that the Senate committee also recommended reducing the amount to that estimated by the District Commissioners, leaving the balance open; that is, from 15 per cent to one-third, to be settled in conference, and, if necessary, to give these people a chance to be heard.

Mr. SMITH of Georgia. Mr. President, I shall wish to discuss the matter at some length a little later; but I now merely want to say that I am not willing to see this matter simply left for settlement in conference. If the one-third is right, I should like to see the Senate make the record that it is right, instead of apparently being forced to make a better record by conference with the House. If it is wrong, then we, of course, ought not to do it. I think the one-third charge is right, and I should much prefer not to see the Senate yield upon it. The Senator from the State of Washington [Mr. JONES], however, desires to discuss the Connecticut River dam bill, which is to be voted on at 4 o'clock, and he has suggested that, instead of asking for a quorum now, he would be able to consume the time and let us pass over this amendment for the moment.

Mr. CURTIS. Then, Mr. President, I ask unanimous consent that the District of Columbia appropriation bill be temporarily laid aside, giving notice that I shall call it up at the first opportunity after the disposition of the Connecticut River dam bill.

The PRESIDENT pro tempore. Further consideration of the appropriation bill will be postponed, and the Senator's notice will be entered.

PENSIONS AND INCREASE OF PENSIONS.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 8275) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors.

Mr. McCUMBER. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. MCCUMBER, Mr. BURNHAM, and Mr. SHIVELY conferees on the part of the Senate.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 8314) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

Mr. McCUMBER. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. MCCUMBER, Mr. BURNHAM, and Mr. SHIVELY conferees on the part of the Senate.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 8178) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

Mr. McCUMBER. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. MCCUMBER, Mr. BURNHAM, and Mr. SHIVELY conferees on the part of the Senate.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 8274) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

Mr. McCUMBER. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. MCCUMBER, Mr. BURNHAM, and Mr. SHIVELY conferees on the part of the Senate.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles and referred to the Committee on Military Affairs:

H. R. 2839. An act for the relief of William Hommelsberg;
H. R. 6793. An act for the relief of Charles A. Bess;
H. R. 8921. An act for the relief of William H. Seward;
H. R. 18727. An act for the relief of Lewis Wood;
H. R. 24296. An act for the relief of Alonzo D. Cadwallader;
H. R. 26648. An act for the relief of David Crowther; and
H. R. 24661. An act for the relief of James Parsons.
H. R. 24942. An act for the relief of the administrator and heirs of John G. Campbell, to permit the prosecution of Indian depredation claims, was read twice by its title and referred to the Committee on Claims.

The following bills were severally read twice by their titles and referred to the Committee on Pensions:

H. R. 28672. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors; and
H. R. 28746. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors.
H. R. 28607. An act making appropriations for the Diplomatic and Consular Service for the fiscal year ending June 30, 1914, was read twice by its title and referred to the Committee on Appropriations.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. JONES obtained the floor.

Mr. McLEAN. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Washington yield for one moment?

Mr. JONES. Certainly.

Mr. McLEAN. I want to offer an amendment to the pending bill and have it printed. As the amendment is very short, I should like to have it read before it is printed.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Connecticut will be stated.

The SECRETARY. At the end of section 1 it is proposed to insert the following:

And provided further, That if said company shall neglect or refuse to pay any charge or return demanded of said corporation by the Secretary of War, either by order or under any contract, and such neglect or refusal is based on the ground that said charge or return is invalid or unconstitutional and not within the power of Congress to require, such neglect or refusal on the part of the company shall not affect the rights of said company to hold and exercise all the powers, rights, and privileges granted in this act; and in any suit brought against said corporation for the collection of said charge or return the said corporation shall have the right to enter its proper plea to test the constitutionality or validity of said charge or return, and the courts shall take cognizance of the same; and nothing in this section shall be understood as committing the Government to a policy of imposing or not imposing such charges or returns as are herein described from any other company or corporation seeking the assent of Congress under like or similar circumstances.

The PRESIDENT pro tempore. The proposed amendment will lie on the table and be printed.

Mr. JONES. Mr. President, I yield to the Senator from Arizona [Mr. SMITH], who, I understand now, desires to address the Senate.

Mr. SMITH of Arizona. Mr. President, the great difficulty with the bill now under consideration is found in the wide difference of opinion amongst Senators as to the powers granted the Federal Government under what is known as the "commerce clause" of the Constitution. No strict construction of that instrument is required in order to condemn the bill before us, and no construction, however liberal or wide, can include the powers attempted to be exercised under the very remarkable provisions of the measure before us. So far as the bill itself is concerned I would not consume the time of the Senate or my own time by a discussion of it, except for the reason that it gives senatorial sanction to a dangerous principle, and if enacted into law establishes a precedent so far-reaching, so disastrous in effects on the people of the Western States, that I can not

refrain from giving some of the reasons which impel me to oppose its passage, especially against that provision which recognizes the right of the Federal Government to exercise any right whatever over any power generated by the flowing waters in any State where such waters are not needed for navigation. This bill presumes to give such power, and for that reason I oppose it.

It is well to see before proceeding farther what the bill under consideration proposes to do, as well as the facts to which it is to be applied. There is, and has been for more than half a century, a dam across the Connecticut River, built by private capital. It does not impair navigation. The proposal is to permit the same people, or their successors in interest, to raise this dam to a greater height for the purpose of creating power for an electric plant. This additional height will improve the navigation of the stream as well as create the power mentioned. The Secretary of War, however, refuses to grant permission to elevate this dam unless the investors in the power enterprise, and who furnished all the money, shall agree to certain provisions and stipulations in a contract giving the Federal Government control over the power produced. Being thus "held up," the proponents consent to the terms exacted by the Government. Against this exaction we raise our protest.

Let us examine the question and discover, if we can, the actual powers delegated to the Federal Government by the States on the adoption of the Constitution, and, ascertaining this, we can clearly see what governmental powers were retained by the people.

I presume that no man on this floor will question the fact that before the adoption of the Constitution the Colonies were the absolute owners and in full control of all the waters washing their shores—the arms of the sea, the inlets and bays, and all streams within their respective boundaries. On achieving their independence each State became the absolute sovereign over its navigable waters, could, if it chose, prevent the use of them to the boats or craft of any other State, and thus seriously interfere with the trade and commerce of any State it pleased to punish or obstruct.

In contemplating the formation of a more perfect union it became at once apparent that the regulation of commerce on these waters was essential to the Federal Government in order that open commerce might be maintained among all the States, free from any State regulation or exactions. Hence came that provision of the Constitution giving "Congress power to regulate commerce among the several States," and so forth. Does anyone here think for a moment that the States intended to surrender any right to the water of their rivers further than was necessary to the regulation of commerce on the streams? The people intended to give and did give only an easement over these waterways of commerce. That this right to regulate commerce amounted only to an easement has been decided time and time again by the Supreme Court of the United States. It is unnecessary to say to any lawyer that no easement ever carried any power with it other than was necessary to its full use and enjoyment.

The rivers as means of interstate commerce are in no essential sense different from railroads engaged in the same business. Each are subject to regulation by Congress to an equal extent. The railroads' right of way over land is in principle the same as the steamboats' right of way over the rivers; both are easements pure and simple. Take the two cases cited by the Senator from Alabama [Mr. BANKHEAD], where one railroad condemned and paid for a right of way over the lands of another, and in the right of way discovered a valuable rock quarry and proceeded to sell the rock as fast as it was taken out. The owner of the land brought suit against the railroad and recovered the value of the stone sold, the court deciding that the easement—the right of passage over the land—carried no other right with it. The second case was in all respects similiar, except in the latter sand was extracted and sold from the right of way, with the same result at the end of the suit. On the citation of these cases the Senator from Ohio [Mr. BURTON] interrupted with the statement that the cases did not apply in any way to any principle in the measure under discussion. In illustrating the powers granted or attempted in this bill, no cases, in my judgment, could be more in point. They seem to me to be decisive of the question at issue here.

As I have said, on forming the Constitution the States relinquished to the Federal Government the simple right to *regulate commerce*. There were no railroads then; sailing vessels and small boats did the business. The States then surrendered this power in order that each might protect its trade against any combination of the other States, but they made no grant of power further than that specifically mentioned. This has been for years the settled doctrine.

Turn from the established rule and see what is attempted in this bill, and a mighty difference appears. We have indeed come to a parting of the ways. From the doctrine that the States—and I mean by that the people—had remaining in them all power that they had not delegated to Congress, we behold an effort through this bill and others like it to hand over to Congress the most sacred rights of the people—rights on which their prosperity as States had grown; rights on which their freedom and independence had so long and so securely rested. Before I get through I hope to show from decisions of the Supreme Court that where the Congress does not act in the matter of improving navigation the States can act. The State can always act as it pleases with its rivers, provided navigation is not interfered with or commerce impeded.

In Huse *v.* Glover (119 U. S., 543) the court said (pp. 548, 549):

> The State is interested in the domestic as well as in the interstate and foreign commerce conducted on the Illinois River, and to increase its facilities, and thus augment its growth, it has full power. It is only when in the judgment of Congress its action is deemed to encroach upon the navigation of the river as a means of interstate and foreign commerce that that body may interfere and control or supersede it. If, in the opinion of the State, greater benefit would result to her commerce by the improvements made than by leaving the river in its natural state—and on that point the State must necessarily determine for itself—it may authorize them, although increased inconvenience and expense may thereby result to private individuals.

The Senator from New York [Mr. ROOT], in order to maintain his advocacy of this bill, was forced by logic to assert that Congress could *create* commerce, and my understanding of his argument was that if it created means of commerce by erecting a dam in a river it was entitled to use or otherwise profit by any incidental value that might accrue from such construction, such as the electric power to be generated in this case.

I deny that any such power rests in the Constitution. I deny that the Federal Government can go into a State and, without its consent, make a navigable stream out of a nonnavigable one; and even if it could do so it does not follow that the Federal Government could also use or sell or contract with anybody for the use of any water power that might be developed by such invasion as it attempted in this bill.

Let us see what the Supreme Court has said on this subject.

In Mobile *v.* Eslava (16 Peters, p. 277) the court holds directly that the right of navigation of State waters is simply an easement, and uses this language:

> The United States, then, may be said to claim for the public an easement for the transportation of merchandise, etc., in the navigable waters of the original States while the right of property remains in the States.
>
> The original States possessing this interest in the waters within their jurisdictional limits, the new States can not stand upon an equal footing with them as members of the Union if the United States still retain over their navigable waters any other right than is necessary to the exercise of its constitutional powers.

These powers, of course, being the regulation of commerce.

Mr. NELSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator yield to the Senator from Minnesota?

Mr. SMITH of Arizona. Certainly.

Mr. NELSON. What case is the Senator reading from?

Mr. SMITH of Arizona. The case of Mobile *v.* Eslava, in Sixteenth Peters, page 277.

Mr. BRANDEGEE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from Connecticut?

Mr. SMITH of Arizona. With pleasure.

Mr. BRANDEGEE. With reference to the statement made by the Senator from Arizona that Congress has no power to create navigation I should like to ask him if, in the case of an interstate river, a river flowing through more than one State, there is an obstruction in the channel, does he deny the power of the Government to appropriate money to go in and blast out rocks or deepen the channel?

Mr. SMITH of Arizona. On that condition; no. Is that an intrastate river or one running between two States?

Mr. BRANDEGEE. Interstate.

Mr. SMITH of Arizona. Navigable above and below?

Mr. BRANDEGEE. Irrespective of whether it is navigable above or below, if it can be made navigable by the operation of the Government under the clause of the Constitution authorizing it to regulate commerce among the States, would the Senator deny the right of the United States to appropriate in the river and harbor bill for blasting out rocks or deepening the channel?

Mr. SMITH of Arizona. That is wide of the question that we now have before us, for I have used that statement, "creating commerce," while conceding that it might probably have power under the word "regulate" to remove an obstruction

from an otherwise navigable stream. I was applying it to what I conceive to be the facts in this case—that at the head of navigation at the time of the adoption of the Constitution the State of Connecticut was the absolute owner of the confessedly nonnavigable waters above this ridge that now runs across the river.

Let me ask the Senator while he is on his feet how many miles of navigation on the river above the dam it is supposed that the dam will give?

Mr. BRANDEGEE. The present obstruction there, according to the report of the committee, consists of rapids to the extent of about 5 miles, and the lock provided for in the bill would make it navigable through to that extent. Of course, the Senator understands there is an existing lock there now, but it has become inefficient in view of the needs of modern navigation and the depth of draft of the boats. It adds 3 to 5 miles to the navigability of the stream.

Mr. SMITH of Arizona. Let me say right here, to test the purpose of this bill, whether it is for the purpose of improving the stream or whether it is for the purpose of creating electrical power, nobody on the face of the earth would think for a minute of spending millions of dollars to add 3 or 4 miles of navigation to a river in these days of modern transportation.

Mr. BRANDEGEE. Mr. President, I fear the Senator does not exactly understand what it is proposed to do. By making navigable this stretch 3 or 5 miles in length, that is at present nonnavigable, navigation will be opened up 50 miles above, away up into Massachusetts, up to Holyoke and Springfield.

Mr. SMITH of Arizona. That is the point about which I was asking the Senator. He misunderstood my question. So my criticism in that particular is probably unjustified.

Mr. BRANDEGEE. I did not understand the Senator.

Mr. SMITH of Arizona. I was asking how much more navigation it gave—how far it extended the line of commerce.

Mr. BRANDEGEE. Away up into the State of Massachusetts, making it an interstate stream.

Mr. SMITH of Arizona. But on the question of whether or not the Federal Government can create navigation, the State certainly owned all the water above this impediment in the river at the time of the adoption of the Constitution and it gave away nothing but the right to navigate. The State owned the balance of it; for in this same case of Mobile against Eslava the court uses this language, which I will read again:

> The original States possessing this interest in the waters within their jurisdictional limits, the new States can not stand upon an equal footing with them as members of the Union if the United States still retain over their navigable waters any other right than is necessary to the exercise of its constitutional powers. To recapitulate, we are of opinion: First, that the navigable waters within this State have been dedicated to the use of the citizens of the United States, so that it is not competent for Congress to grant a right of property in the same. * * *

Congress can not grant any right of property. Therefore can not supervise any contract concerning the surplus waters not needed for navigation.

Mr. BRANDEGEE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Arizona yield further to the Senator from Connecticut?

Mr. SMITH of Arizona. Certainly.

Mr. BRANDEGEE. I agree to that; but what has that to do with this case?

Mr. SMITH of Arizona. That is what I am endeavoring to show the Senator. There is the whole difficulty with this case. Whenever we get to a decision that squarely says you can not do it, we are asked what it has to do with the case.

Mr. BRANDEGEE. What right of property is Congress trying to give to anybody?

Mr. SMITH of Arizona. What right has it at all, except in the interest of navigation?

Mr. BRANDEGEE. None.

Mr. SMITH of Arizona. Then what is it doing in interfering with this contract for the use of the surplus water confessedly belonging alone to the State?

Mr. BRANDEGEE. It is providing, as one of the conditions of the issuance of the license, that they shall pay some money to be used in the interest of navigation.

Mr. SMITH of Arizona. By what power, under this decision, can they say what the State shall pay for its water that is not used or needed in navigation?

Mr. BRANDEGEE. They are not stating what the State shall pay for any waters at all.

Mr. SMITH of Arizona. What is the United States Government doing there at all, then?

Mr. BRANDEGEE. They are not doing anything there yet. They are trying to get there for the purpose of building a dam and a lock to help the navigation of the river. That is what the Government is trying to do. The people who are asking for the license are trying to get the license to build a dam to generate electrical power.

Mr. SMITH of Arizona. We understand all that. I am trying to find out the power of the Government, aside from navigation, whereby it has anything whatever to do with the surplus water, either to sell it or contract for its use or sale.

Mr. BRANDEGEE. But the Government is not selling any water that belongs to the State of Connecticut or anybody else.

Mr. SMITH of Arizona. What the agent can do the principal can do. Can the Senator's mind distinguish between the right of the Government to control this contract and the Government's right to work under the contract itself?

Mr. BRANDEGEE. I do not distinguish that.

Mr. SMITH of Arizona. Nor can anyone else. If the Government can work under it itself, it can work through its agent for any purpose it pleases, can it not? Where does the Senator drive himself?

Mr. BRANDEGEE. I do not understand the Senator, Mr. President.

Mr. SMITH of Arizona. I am unfortunate in not being able to make myself clear. I will try to make my position clearer to the Senator. My contention is that the Government has no business meddling with the affairs of the State of Connecticut and its people——

Mr. BRANDEGEE. I agree to that.

Mr. SMITH of Arizona. In a matter that does not injuriously affect the navigability of a stream. Confessedly this does not injuriously affect the stream or they would not permit the dam to be built. If it does not injuriously affect the stream, the Federal Government has exercised all the power it has; and it has nothing to grant, nothing to give, no supervision over any contract, no right to speak as to what the State of Connecticut shall do with water belonging to the State. It has no right to come in and lay an embargo on the consumers. It has no right to put into its Treasury money thus extorted from the private investment of the citizens of Connecticut in property with which Congress has nothing to do.

The case cited holds unequivocally that all water not essential to the use of commerce belongs to the State, and the State alone can exercise sovereign power over such water.

The interruptions have led me beyond what I had intended thus early to say, and to make my position clear I must, in a measure, start at the beginning and probably repeat something already expressed.

Mr. President, I maintain, and shall show by the very words of the Constitution, by its spirit, and by decisions of the Supreme Court, that all the waters in a State, navigable and nonnavigable, belong primarily and absolutely to the States in which they flow, with this simple modification, to wit, on navigable streams the General Government has an easement for the protection and improvement of commerce between the States. The nonnavigable streams of a State are owned absolutely by the State, and are under the exclusive sovereignty and jurisdiction of the State to the utter exclusion of any control by the Federal Government of any kind whatever.

That the proprietary ownership of public lands within any State by the Federal Government gives it no more control or sovereignty or rights over the waters flowing through such lands than it has over such waters flowing through private lands in Virginia or Connecticut. I am unable to see, after all that has been said and all the light that the trained and acute intellects of the advocates of this bill could throw upon it, how any man reverencing the Constitution, or regarding the reserved rights of the people, or respecting the decisions of the Supreme Court in respect of these rights can for a moment assent to the horrible doctrine that the Federal Government can invade the local rights of the people and lay a tax, or any burden, on their property that it does not likewise lay on every other community similarly situated. Charging a fee or license for power incidentally developed by any improvement of navigation, confessedly not needful for navigation, such waters being owned by the States, and turning the enforced proceeds away from the State into the National Treasury, strikes me not only as monstrous but revolutionary, if not actually treasonable, against the reserved rights of the people, which are fully as sacred as the powers specifically granted in the Constitution. Think, for a moment, what this proposal means.

Mr. President, I make the broad assertion that no case can be found, since the illuminating decision of Pollard *v.* Hagan (3 How.), among all the decisions of the Supreme Court, on which the advocates of this bill can with any confidence rely.

The Fox River cases, cited by the Senator from Ohio [Mr. BURTON], decide no such thing as he claims for them, for the point at issue there was in all respects different from the ques-

tion before us, as is sufficiently demonstrated in the analysis made of those cases by the Senator from Texas [Mr. CULBERSON] and the Senator from New York [Mr. O'GORMAN] in the conclusions of each already printed by the Judiciary Committee of the Senate. Where the Senator from Ohio [Mr. BURTON] makes the prime mistake in his argument is the assumption that in granting a concession to build a dam in a navigable stream that the Government of the United States *has given away a valuable right it possesses*, and in parting with such valuable right it can and should collect for the public good—the United States Treasury—any burden, tax, or toll that Congress sees fit to impose. This error of the erudite Senator is fundamental. He is too well practiced in debate to permit any evasion of his conclusions, provided you grant his premise. The trouble is that the Federal Government has *no right* that it can grant or sell in the navigable or other waters of the State or any waters in the United States. The Government itself can not obstruct navigation in the Connecticut River. It can give no other person any such right.

If you grant that the United States has such ownership as gives the power to obstruct navigation, when it sees fit, by erecting a dam across a river, then you are in an attitude to claim that it can dispose of any power created by the work, to whom it pleases and for what purpose it pleases. But who will contend that the Government has such jurisdiction over or right in the waters of a State as to permit the Federal Government to obstruct the navigation? Could the Federal Government, under the commerce clause of the Constitution, enter a State and obstruct a railroad carrying merchandise between the States? Under that clause in the Constitution, as I have already said, the power over commerce is the same when applied to railroads engaged in interstate commerce as it is over the rivers carrying freight and merchandise. Apply your new-born doctrine to interstate railroads and find, if you can, what station you will get off at.

The Government can not charge the State or the people of a State anything for improving the navigation of a river. The States primarily have that right. Let Congress say that the dam constructed, or to be built, does not interfere with or in any way hinder or obstruct the free navigation of the stream and it has exercised all the power it has in respect of that river. I repeat, with all emphasis possible, the Government has nothing to sell nor bargains to make touching that water when commerce is unimpeded by the State's action or anyone acting under State authority.

The States own the rivers within them, banks, bottom, and stream, subject only to the right of all the people of the United States to use them for the purpose of carrying their commerce in and among the States. The State has a right to build a bridge over any stream within its borders if commerce be not interfered with. Commerce between the States might be and universally is much enhanced and improved by the bridge.

More merchandise would, or often does, pass over such bridge in a day than the stream would carry in a month. Congress, whatever it may have done, without any contest, has no right, moral or legal, to charge anything or receive anything for the construction of a bridge by anybody over any river anywhere, provided that the bridge does not interfere with the navigation of the stream; and even though it does impede or impair the navigation, Congress can not take pay or toll, but is bound to have the obstruction removed. The only interest the Government has in navigable streams is a mere easement, and it has the power, of course, to protect, maintain, and improve the rivers for the more perfect use of the easement, navigation, commerce. Let us see what the Supreme Court, as well as other courts, State and Federal, have said in construing the Constitution in this regard, and incidentally see what has been decided touching the sovereignty of the State over the public lands within its border. One of the early cases, and the one most frequently cited, is that of Pollard's Lessee *v.* Hagan (3 How., 212), where the court uses this language:

> The right of Alabama and every other new State to exercise all the powers of government which belong to and may be exercised by the original States of the Union must be admitted and remain unquestioned, except so far as they are temporarily deprived of control over the public lands.
>
> * * * * * * *
>
> Nothing remained to the United States, according to the terms of the agreement, but the public lands. And, if an express stipulation had been inserted in the agreement granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative, because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted.

And further on the court says:

> By the preceding course of reasoning we have arrived at these general conclusions: First, the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States, respectively; secondly, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States; thirdly, the right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the sale and disposition thereof conferred no power to grant to the plaintiffs the land in controversy in this case.

Justice Bradley, in Shively *v.* Bowlby (152 U. S.), which is one of the leading cases on this question, says:

> Upon the acquisition of a Territory by the United States, whether by cession from one of the States or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States for the benefit of the whole people and in trust—

In trust, mark you—

> for the several States to be ultimately created out of the Territory.
>
> The new States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tide-waters and in the lands under them within their respective jurisdictions. The title and rights of riparian or littoral proprietors in the soil below high-water mark, therefore, are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.

Which rights were merely rights to regulate commerce.

> The United States, while they hold the country as a Territory—

Mark this distinction—

> having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters.
>
> But they have never done so by general laws, and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the States, respectively, when organized and admitted into the Union.

It was never intended that the great natural resources of any State should be reserved by the Federal Government for the pleasure or profit of the citizens of other States or a money profit to the Government itself. It is inconsistent with the condition existing in the original States and with the free exercise of local sovereignty and dominion within their borders.

In the case of Withers *v.* Buckley (20 How., 84) in considering the act of Congress of 1817, prescribing the free navigation of the Mississippi River and its effect on the State powers, among many other interesting and important things, the court said:

> That it could have no effect to restrict the new State in any of its necessary attributes as an independent sovereign government, nor to inhibit or diminish its perfect equality with the other members of the confederacy with which it was to be associated. These conclusions follow from the very nature and objects of the confederacy, from the language of the constitution adopted by the States, and from the rule of interpretation pronounced by this court in the case of Pollard's Lessee *v.* Hagan (3 How., p. 223).
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> * * * * * * *

Again the Supreme Court says:

> The act of Congress of March 1, 1817, in prescribing the free navigation of the Mississippi and the navigable waters flowing into this river, could not have been designed to inhibit the power inseparable from every sovereign or efficient government, to devise and to execute measures for the improvement of the State, although such measures might induce or render necessary changes in the channels or courses of rivers within the interior of the State, or might be productive of a change in the value of private property.

And the court further says:

> It can not be imputed to Congress that they ever designed to forbid, or to withhold from the State of Mississippi, the power of improving the interior of that State, by means either of roads or canals, or by regulating the rivers within its territorial limits, although a plan of improvement to be adopted might embrace or affect the course or the flow of rivers situated within the interior of the State.

From these decisions it is clear that the State and not the United States owns the surplus water in the Connecticut River and can do just what it pleases with it. Any attempted interference by the Federal Government is attempted usurpation; any actual control is usurpation.

The precedent established is what *the real sensible* conservationists most particularly object to, and for reasons which I shall attempt to make plain.

Mr. President, when I observe the usurpation of power in the public-land States by the executive departments and by Congress, I am impelled by a sense of duty to call to the attention of Senators, and as far as I can the attention of the country, to the injustice under which the people of the West are suffering. The unbridled and, as I think, unconstitutional exercise of Federal power over matters in which the State alone has jurisdiction and sovereignty utterly destroys the hope of further development of some of the Western States and threatens their future existence as solvent Commonwealths.

I want in the outset, on this part of the subject, to say that I am as strongly in favor of the conservation of State and National resources as any man here or elsewhere. But I desire sensible conservation. I want to "render unto Cæsar the things that are Cæsar's," but not all that imperial Cæsar might claim. I want the General Government to be free and untrammeled in

the just use of all its powers. I want my State and yours equally free in the same use of the powers rightfully belonging to them. But Congress should remember, in dealing with the Western States, that if it has a giant's power it is tyrannous to use it like a giant. I think I can show that Congress has tyrannically used powers which are doubtful, and the Interior Department has exercised unjustly powers that it never had at all, and by rules, regulations, and orders dedicated our lands to silence and desolation. I have neither the time nor inclination to go into details, but I will stop long enough to assert that the *reversal of the rulings of more than half a century in the matter of mining locations alone* did, and is doing, more harm to one industry than all the good that that department has done the mining States in all their history. Why it was made no man in the West knows. That ruling is born of ignorance, profound ignorance, of the geological conditions in which the precious and semiprecious metals are found—ignorance or carelessness of the vast expense and labor involved in their output—and the manifold and widely distributed blessings attending their successful development. If Congress does not give relief, a blighting paralysis will strike the most beneficent industry, agriculture alone excepted, that the world has ever known. The same department—I do not in this allude to the present Secretary—a few years ago successfully urged on Congress the passage of a law giving the land-grant railroads scrip for the worthless and denuded lands held by the corporation in order to turn them into a forest reserve, and was by this the means of putting vast tracts of the best timbered lands in all the West in the hands of lumber barons, and doomed the forest to destruction the day the scrip was issued.

I make no claim of corruption against the department or the then Secretary, but cite the incident merely to show that the department when dealing with the subject nearest its heart and hope was not then less infallible than the present Secretary has shown himself to be in the matter of mining claims.

I did not take the floor to indulge in criticism, but for a much more serious purpose, and that is to demonstrate by the decisions of the Supreme Court that unjust exactions and burdens are laid on the public-land States by Federal power, or alleged power, that it does not impose on other States, and does not assert the power to impose them on other States, claiming to find warrant for these exactions in the title the Government has to the public lands.

I make the claim that the Government holds the public lands as a private proprietor and not as a sovereign. I doubt if under the Constitution the title is as complete and full for all purposes as an individual holds under a fee-simple title, for the reason, as I have shown, that these public lands are held under and subject to a trust for the use of the State and the citizens thereof. (Shively *v.* Bowlby, 152 U. S.)

I further claim that the running nonnavigable waters of every State are subject to the sovereign will of the State, and unaffected by the trust title the Government holds to the lands through which they flow, and especially so in those States where riparian rights no longer obtain or never did exist.

I further maintain that the Federal power over navigable waters within a State, as well as its interest in the public lands, is and must of necessity be found among the express grants in the Federal Constitution, and the terms of the grant—its language—measures the full power that can rightfully be exercised by the Federal Government over these subjects.

It follows, then, that the rules and regulations which Congress can make for protection of such proprietary title as the Government has can not interfere with the sovereign power of the State to build roads demanded by the necessity of the State—to dig a canal for the purposes of irrigation in some desert county or district of a State—nor can the Federal Government lay any tax or royalty on the State for the use of any lands within its borders for such essential public purposes. If Congress can prevent Arizona from building a necessary road over any lands within the State, then it can prevent any other State from doing the same thing, or else the equal sovereignty of the States is violated and the constitutional mandate in that particular nullified.

You can not set up title to the lands as a plea against sovereignty of the State. You can not, by your right to protect, regulate, and ultimately sell lands within a State, nullify the clause of the Constitution guaranteeing equality of all the States. Your limited title must succumb to the edict of the Constitution. The Government holds no higher or broader title to any acre of the public lands than it transfers to the individual by its patent. Yet no individual could successfully prevent the use of his land for necessary purposes of the State, nor can the Federal Government constitutionally or conscientiously do so.

The power of the Federal Government over the public lands is found in section 3 of Article IV of the Constitution, which declares that—

> The Congress shall have power to dispose of, and make all needful rules and regulations respecting the Territory or other property belonging to the United States.

This language gives no more than a proprietary interest in the public lands to the Federal Government. It can take care of them, use them and sell them, but neither in its supervision, by rules and regulations, nor by sale can the sovereignty which the State holds be usurped or nullified. Over the sovereign right of the State to build a public road the Congress has no more right to hinder in Arizona than it has in Texas. It can lay no toll or tax or royalty on any State or any subdivision of any State in any matter of State sovereignty whatever. The ownership of public lands within a State does not affect in any manner the full exercise of the States' inherent sovereignty.

The people of Texas, or the State of Texas, if you please, in whose borders no acre of public land was ever known, has no more power over the running waters in the State than every other State possesses over their respective streams. Yet, who will claim that Congress can invade the State of Texas and lay tribute or toll on water power developed on such streams? The full ownership of the nonnavigable waters does not lie in the ownership of the landholders along its banks, nor in all of them combined. Riparian right is not a title, and whatever easement or use it carried with it, does not affect in any way those States which *do not recognize riparian proprietorship at all.* The jurisdiction over this question has always been recognized as being in the State, as was said by the Supreme Court in the Water Power Company against Water Commissioner, One hundred and sixty-eighth United States, and citing with approval the same rule laid down in the leading case of Shively against Bowlby, in One hundred and fifty-second United States.

Riparian rights have not and never have been recognized in Arizona. The ownership of land does not affect title to the waters of the State. Whether private persons, or the Government itself, owns all the land along the stream, the right of the people under the laws of the State are not affected. Any citizen can still acquire title to the unappropriated waters in any stream by diverting any amount necessary and subjecting it to any beneficial use named in the statutes of the State. Arizona was admitted to the Union under a constitution which declared that the unappropriated waters in the State belonged to the people, and was subject to appropriation for the beneficial purposes mentioned. This act of admission confirmed the title to the waters in the State beyond all further controversy, and over these flowing streams Congress has no jurisdiction whatever. Nevertheless, the Department of the Interior claims under act of Congress and in exercising full power over this subject and laying what toll rentals and other conditions it pleases on the use of these waters by the State or any citizen of the State. If these exactions are not demanded under a claim of title to the waters they are extorted by claiming title to the land and prohibiting thereby the use or occupancy of any land necessary to the use of the water.

Appealing to the power of eminent domain, we could force any private owner holding title from the Government—being as full in all respects as the Government holds—to permit the use of the necessary land for the great public good. Thus, like that miserable dog in the manger, the department, being unable to devour our substance, proceeds to prevent our use of it. Under a pretense of suppressing monopoly, such restrictions in title and reservation of control, and such tolls are imposed, that no sensible man will invest in many enterprises so essential to the prosperity of the State and the betterment of its people.

The people of Arizona, in all matters within the jurisdiction of the State, can be trusted much further than they can trust the Federal Government in preventing monopoly, and also in destroying it, when found to exist, within its borders.

The Federal Government is no wiser or better than the States composing it. Where the States fail to meet wisely the problems and responsibilities which confront them, the Federal Government will be found in no such moral condition as to attempt the solution of these problems or assume the responsibilities for the people of the States. In our very creation it was wisely otherwise ordained. I have no fear of Arizona wasting her resources, or giving them over to the mercy of monopoly. Her legislature—and if it fail to act—her people can under the referendum prevent any franchise that savors of monopoly, by reserving the right of fixing tolls and charges and rates in all cases where the public is concerned.

If the General Government can lay a duty, or toll, or charge, or tax on the use of the resources of the State by its citizens, or the State itself, surely it can lay no just claim to the revenue

derived and cover it into the general fund of the United States Treasury, but the money so obtained should in equity be turned into the treasury of the State, so that it might supply in a small degree the enormous amount of taxes you have kept from our Treasury by reason of the enormous amount of the most valuable lands in the State which you have covered by reservations. You prevent us from collecting taxes on the property you have taken from us, as you allege for the general good of the United States, and proceed to collect from us and cover into the United States Treasury taxes on the use of resources clearly belonging to us and on which you have no moral right to lay your hand under any pretense whatever.

Where does the Federal Government find its charter to reserve "power sites" on nonnavigable streams in the public-land States? As I have shown, these waters belong to the States and can be used by the State for State purposes. The State has the right to fix such charges as it sees fit on the public carrier of electric power and fix what rate such carrier shall deliver it to the consumer. The cost of the enterprise, together with a reasonable profit on the business, is, of course, paid at last by the consumer. What right, I ask, has Massachusetts, Connecticut, or Virginia, or all the States combined, to lay any burden on the consumers of electric power generated by water owned by Arizona? Any money obtainable from such source for the right to generate the power belongs to the treasury of Arizona alone.

The great irrigation enterprises of the Government stand on a different footing, for in those cases the Government advances the money and requires its repayment by the people using the water, and let us here pause long enough to express the hope *that no more will be required of the water users than the necessary cost of the various enterprises.* But of this I will have more to say when proper occasion arises.

Mr. President, I pray further indulgence of the Senate for the purpose of examining certain decisions of the Supreme Court on the question of the State's absolute ownership and control of all nonnavigable waters within the States, and that the ownership by the Federal Government of the public lands does not affect the State ownership of the water.

And this ownership of water being reserved from the grant to the Federal Government, remained, as I have before shown, in the original States, and such ownership must remain in any State subsequently admitted in order to preserve the equality of the States prescribed in the Constitution. I think it was in Withers against Buckley where the court said:

> Could such an intention be ascribed to Congress, the right to enforce it may be confidently denied. Clearly, Congress could exact of the new State the surrender of no attribute inherent in her character as a sovereign independent State, or indispensable to her equality with her sister States, necessarily implied and guaranteed by the very nature of the Federal compact. Obviously, and it may be said primarily, among the incidents of that equality, is the right to make improvements in the rivers, watercourses, and highways situated within the State.
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> On her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belonged to the original States. She was admitted and could be admitted only on the same footing with them. The language of the resolution admitting her is "on an equal footing with the original States *in all respects whatever.*" (3 Stat., 536.) Equality of constitutional right and power is the condition of all the States of the Union, old and new.

At this very moment we are heavily taxing our overtaxed people for the purpose of building great public highways within the State and for keeping our other roads in passable repair. Can any man who knows the spirit of the Constitution or the jealousy with which the local rights and powers of the States were guarded by the makers dare here assert that any State then existing, or thereafter created, could be compelled to ask Congress for a right of way in order to build a road over any land in a State not held and used by the Government for pure Federal purposes? The mere power to "dispose of and make needful regulations respecting the territory or other property of the United States" can not be so construed as to rob the State of one of the most essential prerogatives of its sovereignty. Otherwise citizens of a county in many of our States could not reach their country seat to serve as jurors or witnesses if Congress saw fit to exclude them from passing across lands claimed by the United States. If the sheriff can not go with his warrant wherever he pleases under the State laws, then no sovereignty is left in the State. And the sheriff with his summons in his pocket is no more essential to such State sovereignty than a right of way for public roads, canals, and so forth, across the lands within the State. In these matters the Government's title to the land must of necessity be subrogated to the greater right of the State to protect and maintain its own government.

Mr. President, I am not claiming that the Supreme Court has decided this particular question, but I am not afraid to hope that when the question comes squarely before it that it will decide it according to my contention, but probably not on account of it.

But let us recur to what the Supreme Court has said. In Huse against Glover (119) we find this language used in deciding the question of State or United States jurisdiction on the Illinois River, and in support of the position taken cites the cases appended to the quotation:

> The private inconvenience must yield to the public good. The opening of a new highway, or the improvement of an old one, the building of a railroad, and many other works, in which the public is interested, may materially diminish business in certain quarters and increase it in others; yet, for the loss resulting the sufferers have no legal ground of complaint. How the highways of a State, whether on land or by water, shall be best improved for the public good *is a matter for State determination,* subject always to the right of Congress to interpose in the cases mentioned. (Spooner *v.* McConnell, 1 McLean, 337; Kellogg *v.* Union Co., 12 Conn., 7; Thames Bank *v.* Lovell, 18 Conn., 500; S. C., 46 Am. Dec., 332; McReynolds *v.* Smallhouse, 8 Rush, 447.)

The cases mentioned were where the State's action by the judgment of Congress is deemed to encroach upon navigation. Earlier in my remarks I asserted that the State could, under its laws of eminent domain, at once seize land of any citizen who had a title just issued by the Government, and from that I attempted to demonstrate the injustice of the Government merely by reason of its title to land, exercising powers destructive of the State's sovereignty.

I find that in the case of United States against Chicago, page 17, the Supreme Court says: "It is not questioned that the land within a State purchased by the United States as a mere proprietor"—and permit me to say it holds the public lands by no other or superior title—"and not reserved or appropriated to any special purpose"—and, I presume, the court means any special Federal, or United States, purpose—"may be liable to condemnation for streets or highways like the lands of other proprietors, under the rights of eminent domain."

Judge Sawyer, in the case of The People against Shawver, reported in Thirtieth California, said:

> That the relation of the United States to the public lands since the admission of California is simply proprietary * * * like any citizen who owns land and not that of municipal sovereignty.

Mr. Justice Bradley, in the Shively against Bowlby case, One hundred and fifty-second United States, if he means what he says, reaches the full limit of my contention in the declaration that—

> Upon the acquisition of territory by the United States, whether by cession of one of the States or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States for the benefit of the whole people and *in trust for the several States to be ultimately created out of the territory.*

The Supreme Court of California, in its early days presided over by jurists whose learning and ability adorned the high position they held, decided time and again that the admission of any State into the Union conferred all sovereignty for all internal purposes on the State except such powers as are expressly conferred by the Constitution on the Federal Government, and that the United States had no interest in or power over the public lands other than any other proprietor would have over his own lands, which decisions have been as often sustained by the Supreme Court of the United States.

As to the waters of a State, whether navigable or nonnavigable, the United States has no right or title whatever except to improve the navigable waters and to prevent any obstruction of the commerce carried thereon, and any assumption of any other power is unwarranted.

Pursuing that argument one step farther, we find Justice Holmes, in Hudson Co. *v.* McCaster (209 U. S.), using this significant language:

> It appears to us that few public interests are more obvious, indisputable, and independent of particular theory than the interest of the public, of a State, to maintain the rivers that are wholly within it substantially undiminished except by such drafts upon them as the guardian of the public welfare may permit for the purpose of turning them to a more perfect use. This public interest is omnipresent wherever there is a State and grows more pressing as population grows. It is fundamental. Riparian rights have no deeper roots.

In concluding this part of my argument I will, Mr. President, content myself with one quotation from the now celebrated and much-discussed case of Kansas *v.* Colorado (206 U. S.), where Mr. Justice Brewer says:

> But it is needless to pursue the inquiry further in this direction. It is enough for the purposes of this case that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters.

Under all these decisions by what authority can it be claimed that the United States has power, commercially and for purposes of its own profit, to invade a State under pretense of safeguarding or improving navigation and proceed to sell power produced by the water unnecessary to navigation? And where, I ask, in the Constitution does any executive department of the Government find any warrant or excuse for invading a State

for the purpose of reserving power sites on nonnavigable State streams for commercial purposes unconnected with any governmental needs over and above the cry of its General Treasury for more supplies? We are willing to pay our part of such demands as this; we protest against paying more.

In Escanaba Co. *v.* Chicago (107 U. S., 678, 687) the court said:

The doctrine declared in these several decisions is in accordance with the more general doctrine now firmly established, that the *commercial power of Congress is exclusive* of State authority *only* when the *subjects* upon which it is exercised are national in their character and admit and require uniformity of regulation affecting alike *all the States*. Upon such subjects only that authority can act which can speak for the whole country. Its nonaction is therefore a declaration that they shall remain free from all regulation. (Welton *v.* State of Missouri, 91 U. S., 275; Henderson *v.* Mayor of New York, 92 id., 259; County of Mobile *v.* Kimball, 102 id., 691.)

"In the matter of our right to carry water through canals over the public land, notwithstanding the alleged right of the Government to reserve power sites on our streams, the most that can be claimed is that the Federal Government might now, however inequitable it might be so to do, adopt rules and regulations under which, as a private proprietor, it could exact and receive such compensation as another private proprietor might exact within a State for a right of way connected with a public use. In so doing it could not, under the law, claim to be acting *pursuant to any public duty*, or for the *public benefit*, but merely as a selfish, private proprietor exacting, in connection with the development of local industry, such damages as resulted to its lands in connection with the easement or use.

"That its rights as a proprietor could in no event be so asserted as to impede or prevent the development of the State's resources or impose upon its citizens any unusual charges, or any terms or rights of way connected with continuing public uses, or reserve any official control or police power or regulation of business, or monopolies in Federal authority, or in any manner invade or seek to exercise such powers in conjunction with or in substitution for the State, are matters so well settled as to be beyond the pale of argument, or it would so appear if the Supreme Court of the United States is still assumed to have power to construe and interpret the law."

If the State of New Jersey, for instance, can protect its citizens in the free and uninterrupted use of its waters, subject to no charges, restrictions, or terms, except only such as the State itself imposes, what, I ask, becomes of all the decisions sustaining the equality clause of the Constitution, and what becomes of that constitutional guaranty to all the States if in public-land States this right was made subordinate to the following Federal powers, namely:

1. To impose a charge in connection with the right of way measured by the water or its products.

2. To withhold access to rights of way and use, except upon payment of what such "opportunity" is worth to divert, appropriate, and use it.

3. Reserving in Federal officials power of inspection, supervision, and determination of disputed questions and fixing of charges, and also power to determine questions of monopoly proceedings in restraint of trade and police powers fully invested in the State.

4. To permit uses of rights of way for beneficial uses—subject to be continued and compelled by mandamus under State authority—for limited periods only, at the end of which term the powers of the State and the rights of the owner would depend upon further governmental favor or departmental action, and beyond such term to be subject to further regulation, taxation, and limitations.

5. To compel a transfer of the water right to the United States, presumably to invest it with control and authority and taxing and charging power, as a condition of "permitting" the State and its agencies to install and enjoy a public use in the State.

But the fact is that such Federal powers are assumed in the public-land States, while its exercise in the original States was never dreamed of.

Let me hastily cite at random a few cases that may illustrate our contention.

In the United States *v.* Railroad (27 Fed. Cases) Judge McLean says:

Within the limits of a State Congress can, in regard to the disposition of the public lands and their protection, make all needful rules and regulations. But beyond this it can exercise no other acts of sovereignty which it may not exercise in common over the lands of individuals. A mode is provided for the cession of jurisdiction when the Federal Government purchases a site for a military post, a customhouse, and other public buildings; and if this mode be not pursued, the jurisdiction of the State over the ground purchased remains the same as before the purchase. This, I admit, is not a decided point, but I think the conclusion is maintainable by the deductions of constitutional law.

* * * * * * *

But the important inquiry is whether the public lands are subject to the sovereignty of the State in which they are situated.

It is a fair implication that if the State were not restrained by compact it could tax such lands. In many instances the States have taxed the lands on which our customhouses and other public buildings have been constructed, and such taxes have been paid by the Federal Government. This applies only to the lands owned by the Government as a proprietor, the jurisdiction never having been ceded by the State. The proprietorship of land in a State by the General Government can not, it would seem, enlarge its sovereignty or restrict the sovereignty of the State. This sovereignty extends to the State limits over the territory of the State, subject only to the proprietary right of the lands owned by the Federal Government, and the right to dispose of such lands and protect them under such regulations as it may deem proper. The State organizes its territory into counties and townships, and regulates its process throughout its limits, and in the discharge of the ordinary functions of sovereignty a State has a right to provide for intercourse between the citizens, commercial and otherwise, in every part of the State, by the establishment of easements, whether they may be common roads, turnpike, plank, or railroads. The kind of easement must depend upon the discretion of the legislature. And this power extends as well over the lands owned by the United States as to those owned by individuals. This power, it is believed, has been exercised by all the States in which the public lands have been situated. It is a power which belongs to the State and the exercise of which is essential to the prosperity and advancement of the country. State and county roads have been established and constructed over the public lands in a State, under the laws of the State, without any doubt of its power and with the acquiescence of the Federal Government. In this respect the lands of the public have been treated and appropriated by the State as the lands of individuals. These easements have so manifestly conduced to the public interest that no objection from any quarter has hitherto been made. And it is believed that this power belongs to the States.

It is difficult to perceive on what principle the mere ownership of land by the General Government within a State should prohibit the exercise of the sovereign power of the State in so important a matter as the easements named. In no point of view are these improvements prejudicial to the general interest; on the contrary they greatly promote it. They encourage population and increase the value of land. In no respect is the exercise of this power by the State inconsistent with a fair construction of the constitutional power of Congress over the public lands. It does not interfere with the disposition of the lands, and instead of lessening enhances their value.

Where lands are reserved or held by the General Government for specified and national purposes it may be admitted that a State can not construct an easement which shall in any degree affect such purposes injuriously. No one can question the right of the Federal Government to select the sites for its forts, arsenals, and other public buildings. The right claimed for the State has no reference to lands specially appropriated, but to those held as general proprietor by the Government, whether surveyed or not. The right of eminent domain appertains to a State sovereignty, and it is exercised free from the restraints of the Federal Constitution. The property of individuals is subject to this right, and no reason is perceived why the aggregate property in a State, of the individuals of the Union, should not also be subject to it. The principle is the same and the beneficial result to the proprietors is the same in proportion to their interests. These easements have their source in State power and do not belong to Federal action. They are necessary for the public at large and essential to the interests of the people of the State. The power of a State to construct a road necessarily implies the right not only to appropriate the line of the road, but the materials necessary for its construction and use. Whether we look to principle or the structure of Federal and State Governments or the uniform practice of the new States there would seem to be no doubt that a State has the power to construct a public road through the public lands.

Judge Sawyer said in People *v.* Shearer (30 Cal.) that since the admission of that State the public lands were held by the United States simply as proprietor and not as a municipal sovereign.

See also Woodruff *v.* North Bloomfield, etc., Co. (18 Fed. Cases, p. 772):

Upon the cession of California by Mexico the sovereignty and the proprietorship of all the lands within its borders in which no private interest had vested, passed to the United States. Upon the admission of California into the Union, upon an equal footing with the original States, the sovereignty for all internal municipal purposes and for all purposes except such purposes and with such powers as are expressly conferred upon the National Government by the Constitution of the United States, passed to the State of California. Thenceforth the only interest of the United States in the public lands was that of a proprietor, like that of any other proprietor, except that the State, under the express terms upon which it was admitted, could pass no laws to interfere with their primary disposal, and they were not subject to taxation. In all other respects the United States stood upon the same footing as private owners of land. They could authorize no invasion of private property, either to enable their grantees to mine the lands purchased by them of the Government or otherwise. (Biddle Boggs *v.* Merced Min. Co., 14 Cal., 375, 376; People *v.* Shearer, 30 Cal., 658; Pollard's Lessee *v.* Hagan, 3 How., 223.)

We quote again from the case of Illinois R. R. Co. *v.* Illinois (146 U. S., 434):

"The State of Illinois was admitted into the Union in 1818 on an equal footing with the original States in all respects. Such was one of the conditions of the cession from Virginia of the territory northwest of the Ohio River, out of which the State was formed. But the equality prescribed would have existed if it had not been thus stipulated. There can be no distinction between the several States of the Union in the character of the jurisdiction, sovereignty, and dominion which they may possess and exercise over persons and subjects within their respective limits."

How does this language lie parallel with the claim of some of our fellow citizens that the United States Government in States having public lands can impose terms on perpetual beneficial uses, unusual charges and restrictions, control over monopolies, and police powers in such States which the Federal Government does not claim to possess or exercise in other States?

The case is so often cited in this debate and by Senators in opinions given out from the Judiciary Committee by members of it on the resolution of inquiry submitted to that committee touching Federal power on navigable streams, that I will content myself with the following citation from the great case of Kansas *v.* Colorado (185 U. S.):

> We do not mean that its legislation can override State laws in respect to the general subject of reclamation. While arid lands are to be found mainly if not only in the western and newer States, yet the powers of the National Government within the limits of those States are the same (no greater and no less) than those within the limits of the original 13, and it would be strange if, in the absence of a definite grant of power, the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders.
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> But it is useless to pursue the inquiry further in this direction. It is enough for the purposes of this case that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters. Martin *v.* Waddell (16 Pet., 367), Pollard *v.* Hagan (3 How., 212), Goodtitle *v.* Kibbe (9 How., 471), Barney *v.* Keokuk (94 U. S., 324), St. Louis *v.* Myers (113 U. S., 566), Packer *v.* Bird (137 U. S., 661), Hardin *v.* Jordan (140 U. S., 371), Kaukauna Water Power Co. *v.* Green Bay & Mississippi Canal Co. (142 U. S., 254), Shively *v.* Bowlby (152 U. S., 1), Water Power Co. *v.* Water Commissioners (168 U. S., 349), Kean *v.* Calumet Canal Co. (190 U. S., 452). In Barney *v.* Keokuk, supra.

It seems clear then, Mr. President, to my mind at least, that the department, whether acting under presumed congressional authority or otherwise, has no power to enter a sovereign State and in direct derogation of the State constitution and laws withhold from the necessities of the people of the State the use of water within the State, for any beneficial purpose whatever.

That ownership of the public lands, especially where riparian rights do not exist, gives the Government no tile to the streams or power over the same.

That the United States in order to acquire right or title to such water must do as the private citizen has to do, which is to divert it and submit it to beneficial use. The Government, however, must submit it to a governmental use in order to hold it against one wanting it.

Mr. President, may I be pardoned for a digression here?

I said in the outset that I was as much in favor of a sensible conservation of State and national resources as anyone can well be. I abhor monopoly in all its phases, whether practiced by individuals, or States, or the United States, except where the Constitution makes monopolies, such as in the administration of the Post Office Department, the issue of money, and such like necessary cases, where, instead of injury to the people, it subserves the common good of all. With this avowal of principle I want also to say that I have never claimed or owned or applied for a foot of public land through all the years of my residence in Arizona, except in mining claims, and for that I have only "a harvest of barren regrets" for the pains and penalties endured. I have no personal interest in any water course; and no act of Congress in respect of the same can injure me personally. I own no stock or shares in any corporation of any kind whatever and am under no obligation—personal or otherwise—to any of them anywhere. I make this declaration for no purpose other than that I may say what I have to say, and that you may hear, knowing my only purpose is to serve as best I can the public interest unprejudiced and uninfluenced by any purely personal interest of any kind whatever.

Mr. President, whatever the power of Congress may be, and giving whatever interpretation of the decisions cited that the Senate pleases, I am ready to maintain, and do maintain, that the public-land States are unjustly if not outrageously treated by Congress and the executive departments, whether they have or have not the Constitutional warrant for the exercise of powers of which we make complaint. If law is deficient in our aid, I file our bill in equity, and ask in the forum of conscience whether you will further oppress the struggling people in the new States and permanently retard that development which nature, together with their courage and fortitude, so amply promised and stands so willing to fulfill?

Prating about monopoly and crying from housetops against its aggression, the agents of the Government, and Congress itself, has established and is maintaining among us the most ruinous monopoly of modern times. I allude to the public-land policy of the United States as now administered, and the withholding from all useful purposes of the State one-half its area and all the lands growing a stick of timber of any lumber value. Not only this, but the alleged forest reserves have been in many cases extended far out on the plains, where nothing grows but grass, with the purpose of renting the lands for grazing privileges and turning the money away from the State into the National Treasury to pay or help to pay a horde of imported forest rangers, many of them good men, no doubt, but all impressed—if not obsessed—with the idea that the security of their tenure in office depends on the activity shown in making charges—as many as possible—against the settlers and others, who of necessity have business in or near such reserve.

Mr. President, while it may not be germane to the question now before us, I trust the Senate will bear with me yet a little longer, in view of the very great importance of the matters—to the public-land States—which I desire to call to legislative attention. And that is the enormous, ruinous reservations that have been made of the public lands in the Western States. Under a mistaken idea that the States are dangerous, and under the equal delusion that the Federal Government is safe, Congress has by statute turned over to Executive experiment almost every resource that the public-land States relied on for growth, progress, and prosperity. These States had a right to rely on their internal natural resources for future growth, even as the older States relied on and enjoyed them. The men that went forth from the older States, knowing something of the history of their homes, and braved and bore the perils and hardships of the West in the hope that they might give their children a better chance than they had had in life, never dreamed that when their courage and endurance had, in a measure, overcome the awful difficulties daily confronting them and laid the foundations of great States that the Federal Government would reverse its policy of a hundred years and seize from them without remorse and hold without shame everything on which existence as a State could depend; taking from them the most fruitful source of revenue, by depriving them from taxation of valuable lands, and holding the same at a great loss not only to the State, but to the General Government as well, dedicating the unused forest to fires, and the deserts to everlasting desolation, the streams so full of power doomed to useless unheard songs of idleness; to turn hope to despair, industry to unwilling repose; to raise at the gates of a greater Eden the sword forbidding entrance, and call all this *conservation of our natural resources;* and you may bask and smile in the effulgent glory of the new false light, but God have mercy on the victims of this new departure. What do these doctrinaire and ethical propagandists, headed by visionary cranks riding their hobby-horses recklessly over every hurdle that our rights, our property, and our lives can rear, expect to accomplish for either our good, their happiness, or the common interest? I freely grant they have no vicious purpose. On the contrary, I accord to them honesty of purpose. Fired by a romantic zeal, born of ignorance of existing conditions, through a cross on Sanca Panza, they go forth fully panoplied to a mighty assault on windmills of their own creation. And they call this *conservation.* "God forgive them, for they know not what they do."

Let us see what they have done and are doing. Speaking for Arizona, they have taken up half our State in reservations of different kinds, and in that half four-fifths of the available lands of the State are included. In other words, they have left to the State of Arizona less than one-fifth—yes, in fact, less than one-tenth—of its valuable lands for any purpose of use or revenue. These reservations are conducted or managed—or mismanaged—at a tremendous loss to the National Treasury and with ruinous effect on the State. And yet the eastern public has learned to call it conservation. If this sort of conservation continues long enough, it will depopulate the State and bankrupt the Federal Treasury. If conservation means spending money on national resources without any return, the time must come when you will find plenty of resources, but no money in your exchequer, and nobody ready to cash such assets. What is conservation, anyway? What does it mean? The high priest of the new departure has defined it to be "use without waste of our natural resources for the benefit of all the people." That sounds good. The statement of broad, general ethical principles always does. The popular conception of conservation, with which I fully agree, is that it permits the wise use and prevents the willful waste of the natural resources still found on the public domain. Conservation has been, however, intrusted to a bureau of the Agricultural Department which, having had no proper reproof, has grown arrogant and wasteful. This has gone on until conservation now threatens with destruction the very resources we are trying to hold for wise use and against profligate waste. The West sees this. The East does not. The East knows theoretical conservation as taught by mere theorists. The West knows it from actual experience as it is being practiced in the West. The East has been taught to believe that every western man is a land thief. The West knows that the greatest aid to land thieves, whether conscious of it or not, is the General Land Office administered through Federal authority, as in the cases where land scrip has been given railroads and their grantees for worthless lands, for forest-reserve purposes, and the scrip placed on the finest timber

lands in all the West. No greater robbery was ever perpetrated.

The trouble is that, whether good or bad, the West is bearing the burden of all this conservation for the whole Nation; for, aside from a few thousand acres in Michigan and Florida, the West bears the burden of largely over 190,000,000 acres reserved from local necessary use. Coal lands and oil lands have been locked up as national forests and local settlers denied any access to them or use of them; and they *call* this *conservation*.

Mr. President, I have gone further than I intended on this question, but I can not refrain from presenting a few expressions from Pearson's Magazine of January, 1913, written by Ed. H. Thomas, who seems familiar with the question and fair in his statements:

Western resources have been locked up by blanketing the public domain with reserves; coal lands, oil lands, etc., have been reserved as national forests.

The withdrawals are made without the least knowledge of the land; Bellingham, a city of 30,000 people, was included in a Washington coal-land withdrawal.

Total timber sales on the reserves for 7 years have averaged less than 9 per cent of the annual new growth, while a $3,000,000 annual deficit piles up.

Northwestern cities have to get their power from British Columbia, because water-power sites have been withdrawn without provision for their future use.

In Washington State alone decay annually kills 1,000,000,000 feet of timber on reserved land; total sales are 7,000,000 feet; waste like that keeps lumber prices up.

The Forestry Bureau thinks it wise to perpetuate forests which produce 33⅓ cents per year per acre on land which, if cultivated, would produce from $50 to $500.

Land along the international line is alike; just north of the line last year mines produced $11,000,000; just south, $800,000; the south mineral land is forest reserve.

Alaska is buying domestic fuel from British Columbia for from $17 to $30 per ton, while its own land is full of coal which it is not allowed to use.

Mr. President, I will not detain the Senate longer. At some future and more convenient time I hope to take up the question of conservation as now practiced; to suggest the miserable mistakes being made and to call attention to what should be done in respect of the natural resources located in the several States, and suggest the proper means to secure to the States their rightful interest in these resources, without loss to the great cause of conservation and without injury to the National Government, but at the same time conferring immeasurable benefits on the respective interested States. I appreciate the magnitude of the undertaking, but am ready to assume the burden when proper opportunity appears.

One thing, however, is as certain to-day as it was in the beginning. No one or one dozen States can afford to support the National Government. No one State should have more than its due weight of national burdens placed on it than every other State equally bears. Every State has, and always has had, about all it can do to support properly a State government's manifold demands on the resources of the State. Its internal obligations many times over exceed all just demands of the more general welfare of the whole country. Virginia and Massachusetts, in more wasteful days, and especially Michigan and Wisconsin, having permitted destruction of their resources, have no just claim to make on Colorado and Oregon. Times have changed. No State in the Union nor all of them combined are wider awake or more watchful of waste than is the State of Arizona, and Colorado, New Mexico, and Washington. The Government may have, and in fact has, permitted unpardonable waste of Arizona's natural wealth, but Arizona is not and has not been guilty. Under the beneficent power of the people, exercised through the referendum of all questionable legislative acts to the electorate, there is no need of your fear that we can not protect ourselves against aggressions of individual or corporate greed. Better far to trust the people of Arizona to protect themselves against cormorants that would consume or waste their substance than to leave their guardianship in the hands of an ill-advised and too often careless Congress.

Mr. JONES. Mr. President, the only provision in this bill over which there is any substantial controversy reads as follows:

And provided further, That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith.

This provision is urged in the name of conservation and for the alleged purpose of creating a fund to be used in the improvement of the Connecticut River generally and the waters connected with it.

In the last analysis the real and only issue on this bill is whether by legislative authority some people shall have their property taken away for the benefit of some other people without compensation. I do not refer to the Connecticut River Co.; I am not concerned about its welfare; it can take care of itself. The consumers of its power are the people in whom I am interested, and why they should be required to contribute of their means to create a fund to improve navigation for the benefit of localities above or below them I am unable to comprehend.

While it would be well to have the legal authority of the Federal Government to impose charges for the use of power created, as it will be created under the terms of this bill, fully and clearly determined, and while our discussion has largely revolved around this proposition, we do not need to decide it in order to reach a correct conclusion as to what we should do. Conceding, merely for the sake of the argument, and for that purpose only, that the Federal Government has the legal right to impose this charge, should it do it?

The people think that conservation is at stake. This is not true. This will be a better conservation bill without this provision than with it. Those favoring this charge are the real obstructionists, the real anticonservationists. This proposition, however, would have no strength and no support at all except that the people have been led to believe that it is in the interest of conservation. Not all that is labeled "conservation" is conservation. We are in favor of conservation. We want our natural resources developed and used. We will agree to the most liberal construction of the Constitution in order to insure the proper use of the resources of the country. We are in favor of that conservation that will bring the greatest good to the people out of all our natural resources with the least expense to them and without monopoly. We want navigation promoted, waste power utilized, monopoly prevented, and fair, just, and reasonable rates for the consumers of power and other natural resources.

What is this bill? It is a bill to give the assent of Congress to the construction of a dam in a navigable river at a point where it is not now navigable to a corporation that desires to build that dam for the generation of water power. The sole purpose of the company is to develop power. In order to secure permanency for its investment and surety against its disturbance in the interest of navigation it asks the consent of Congress to put in this dam. Navigation interests should be protected, and we are in favor of protecting those interests fully. In the bill there is every provision necessary to furnish every facility required for present and prospective navigation where the dam is to be located at the expense of the company and without any cost to the general public. All such provisions are agreed to. There is no opposition to them. Unnatural monopoly is guarded against by the provision relating to assignments to which there is no opposition, and in order to guard further against possible monopoly I shall offer an amendment that will clearly and fully prevent it so far as this can be done by or through legislative enactment. It is agreed by all that fair, just, and reasonable charges by the company to the consumers of its power are assured by competition and effective public-utilities commissions in Connecticut and Massachusetts. In the alleged majority report submitted by the Senator from Ohio it is said:

The public interests seem to be fully safeguarded in this instance against exorbitant charges, because the generation and sale of electricity in the territory covered by this development are under the jurisdiction, both in Connecticut and Massachusetts, of well-organized utility commissions under State authority.

If this is not sufficient the amendment offered by the Senator from Idaho, giving the Interstate Commerce Commission authority over interstate rates, will supply any deficiency. What more is to be desired? Navigation is amply provided for, monopoly is guarded against, and just and reasonable prices are assured to the consumer. In what way is conservation neglected or prevented?

Notwithstanding all this it is insisted in the name and under the guise of conservation that the corporation must pay such annual charges to the National Government as the Secretary of War may from time to time impose. This is the issue. This is the real obstruction to real conservation. This is what continues the waste of this power against which our friends on the other side so loudly complain. What does it mean? It means an additional tax or burden on the people who consume the power. It will be a legitimate expense charge, just as much so as any other improvement cost. The Senator from Connecticut [Mr. BRANDEGEE] frankly admits that the consumer must pay whatever tax is thus imposed. The Senator from Ohio, recognizing the force of such admission and apparently more desirous of securing this legislative declaration than of protecting the people from exorbitant charges, tries to argue that the consumers will not have to pay this tax. In this he does an injustice to his usually good judgment and logical reasoning. He shows to what straits he is driven to maintain his position. He could just as fairly argue that the cost of putting in the dam

would not add to the cost to the consumer. The one would be just as logical as the other. No; if this charge is imposed the public-utility commission or the Interstate Commerce Commission, in determining the rates that are reasonable to be charged the consumers of this power, must take into consideration and allow for this tax, and the people will have to pay it.

What benefit comes from it; what good does it do? It does not improve the navigation of the river at this point, because that is assured by other provisions of the bill. It is of no benefit to the people who buy the power, because they must pay the tax.

Some say it will prevent monopoly, and this was the original ground upon which it was urged. I may be dull, stupid, and obtuse, but I must confess that I can not see why or how the levying of a tax by the National Government on the company producing the power will prevent monopoly or benefit the people. On the contrary, instead of preventing monopoly it will promote it. It will impose a burden on the production of this power that is not imposed on other power production, and thereby either prevent the development of such power propositions or reduce the competitive capacity of this company and other companies upon which such charges are not imposed. Instead of tending to secure lower prices to the consumers, it will have a tendency to raise the price at which other companies sell their power.

The Senator from Ohio seems to think that if this company charges more for its power than other companies that a part of this extra charge should come to the Government. What we insist is that this company shall not charge for its power any more than just, fair, and reasonable rates, and that is what the people desire and all they desire. If by the imposition of this charge it is recognized that this company may charge more than what is fair, just, and reasonable, the inevitable result will be that other companies will raise their charges nearly if not quite to the level of the charges of this company, and thus the imposition of a charge by the National Government upon this company will permit extortionate charges by all the power companies of the States involved.

A peculiar, strange, and mysterious suggestion as to the effect of this tax is put forth in the alleged majority report submitted by the Senator from Ohio. He says:

> It is believed that the authority of the Secretary of War to require a return to the Government in case the corporation earns more than a reasonable return upon its bona fide investment will be in effect a regulation of the charges of the company as well as a source of revenue to the Government, because it will be one of the most important factors to be taken into consideration by the commissions mentioned in fixing the rates of service which the company may charge.

Doubtless the impression conveyed by this statement is that such "a regulation of the charges of the company" would tend to lower prices, because the Senator from Ohio would not dare to suggest that a regulation tending to raise prices would be desirable. How the levying of a tax on the production of water power can lower the price to purchasers is beyond my comprehension, and when the Senator from Ohio wrote that sentence he must have been contemplating the real practical effects or results of modern paper conservation. The practice and administration of conservation policies thus far has resulted uniformly in higher prices to the people. Our forests have been conserved and lumber has increased in price. Coal deposits have been conserved and the price of coal to consumers has steadily advanced, and, if the policy of this bill is carried out, the conservation of water power, as it contemplates, will result in increased prices to consumers.

But, it is said, "this power has been going to waste since the river began to run. We want to stop it." Well, stop it. It rests with those who favor this provision whether it shall continue or not. Cut it out and the bill will pass the Senate without a moment's delay. The dam will be built, navigation will be provided for, power will be developed, and waste will stop. All that is necessary is to omit this unwise and indefensible provision.

"But," it is said again, "the navigation of the river above and below should be improved. Navigation is a public right and a public benefit, and it is for the public interest to collect a charge to go into a fund to improve the navigation of the Connecticut River not only at the point where the dam is to be constructed but at other places above and below and in adjacent waters."

That sounds good. Many have been "buncoed" by similar suggestions. Propositions without merit are often bolstered up with the plea of the "public benefit." The people sometimes have been deceived by it. What does it mean in this case? The people who will consume this power will pay for the improvement of navigation in the river at the point where the dam is located and a reasonable profit on the investment. That is certain. They pay for an improvement that is a great benefit to them, it is true, but it is really a greater benefit to others who do not pay a cent of the cost. Shipping interests and localities far away upon whom none of the burdens fall get the greatest benefits from the navigation provided. We go far enough when we impose upon the people of this locality the burden of improving the navigation at this point, the principal benefit of which goes to the people below, people at a distance, and to the people of Holyoke and other points above. This would seem to be enough to the most exacting, but it is not. The Senator from Ohio and others insist that these people must pay an additional sum to provide a fund for the improvement of the river at other points and for the benefit of those who pay nothing. This can not be justified on any legal or moral ground. The cold, bare, naked proposition is to take from some people's pockets money and put it in some other people's pockets without any compensation on the plea that "it benefits the public." The Secretary of War, in his report on this bill, referring to the provision imposing this charge to be devoted to the interest of navigation, says: "With such a provision I am of the opinion that the bill is in the interest of the public." If the public benefits, is it not fair that the public should pay? Is this another proposition which, in the name of progress, reacts to the feudal days when might and power made right? It is contrary to the fundamental principle of every American State. No constitution of any State in the Union says that private property may be taken for the public use without compensation, and I doubt if there is a constitution that does not expressly say that private property shall not be taken for the public use without compensation. There is no justice, there is no merit in the plea that the people of one locality shall be made to contribute of their means for the benefit of the general public, while other localities not only do not contribute but enjoy the fruits of such a contribution. When we are held up at the point of a gun and our money taken from us we call it highway robbery. When we hold up a community by legislative enactment and take their money for the profit or advantage of others, we call it "a public benefit" or "conservation." Whatever you call it, however, the act is just as indefensible in the one case as in the other.

"But," says the Senator from Ohio and others, "this company is willing to pay these charges in order to get this legislation." Of course, it is. It knows that when it pays these charges to the Government it will collect them from its customers. It loses nothing by accepting this measure. This tax is no burden on it.

"But," they say, "the imposition of this charge is in the interest of conservation." How, when, where, why, and to whom? They do not say and can not. It conserves nothing. It promotes nothing. It lightens no burden. It prevents no waste and, if persisted in as a policy, it will encourage monopoly, continue waste, and enhance prices. It will promote monopoly by diminishing the number of power plants. It will continue waste by retarding development. It will enhance prices by increasing the cost of production and restricting competition.

This charge is to be fixed after ascertaining the profits of the company and making due allowance for all expenditures, and so forth. How are these profits to be ascertained? There is no provision in the bill in this respect. Under what authority and through what officers will the Secretary of War ascertain what the profits, expenditures, and so forth, of this company are? After the passage of this bill, is it expected that Congress will be asked to create a bureau and provide inspectors to investigate and ascertain these matters? If assent is given to the construction of dams in other parts of the country with this provision attached, the creation of such a bureau and the appointment of such inspectors will be the inevitable result. That is the real purpose behind this bill. That is the real motive behind those who are sedulously cultivating a public sentiment in favor of this class of legislation under the guise of "the public benefit." The expense of such a bureau would be great, and once established would simply add one more tentacle to the pernicious bureaucratic system that is taking possession or practically controlling governmental activities. Some seem to think that this bill gives the Government supervision and control over the affairs of the company, the issuance of stock, and so forth. Not so. There is nothing in the bill giving this power, even if it could be granted to any Federal official.

We are in favor of every provision within the authority of Congress in bills of this kind to protect and promote the interest of the people, and especially of the localities directly affected. We want our water powers conserved, developed, and used. We do not want them to be monopolized any more than is absolutely necessary by reason of the conditions under which they must be developed, and we want the power when developed to be sold to consumers at the very lowest possible rates. We want navigation interests fully protected, promoted, and conserved, and no strict construction of our constitutional power will be indulged in to prevent this. We will not stand in the

way of legislation which will fully protect the interests of navigation at the point to be improved. We will agree to all legislative provisions necessary to prevent monopoly and extortion. President Roosevelt, in his message vetoing the bill permitting the construction of a dam in Rainy River, laid down certain provisions which he thought legislation of this kind should contain. His message showed that his greatest fear was of a monopoly. That there is a monopoly in our water power now more or less far-reaching and more or less increasing in power and extent beyond the limits of a natural monopoly we have no reason to doubt, and I am willing, as I have said, to support all provisions which, in my judgment, will tend to curb and destroy monopoly.

I desire to say that President Roosevelt is entitled to a great deal of credit for his efforts in favor of imposing proper conditions upon grants of this kind. There are certain conditions that should be imposed. It was well, in order to bring this matter to the attention of the people, to bring it home to them, that he stopped the passage of bills not containing reasonable restrictions, so that the attention of the people should be riveted upon this question and a correct and wise solution worked out.

That is what we want to do on this bill, and that is what we can do and what we are willing to do. In his message on the Rainy River bill he concluded in this wise:

In place of the present haphazard policy of permanently alienating valuable public property we should substitute a definite policy along the following lines:

First. There should be a limited or carefully guarded grant in the nature of an option or opportunity afforded within reasonable time for development of plans and for execution of the project.

That is all provided for in the pending bill. That condition is complied with.

Second. Such a grant of concession should be accompanied in the act making the grant by a provision expressly making it the duty of the designated official to annul the grant if the work is not begun or plans are not carried out in accordance with the authority granted.

That provision is also complied with in the pending bill.

Third. It should also be the duty of some designated official to see to it that in approving the plans the maximum development of the navigation and power is assured or at least that in making the plans these may not be so developed as ultimately to interfere with the better utilization of the water or complete development of the power.

That condition is also complied with in the present bill and by the general law that is referred to and made a part of it.

Fifth. Provision should be made for the termination of the grant or privilege at a definite time, leaving to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at that time.

That condition is also complied with in this bill, although not exactly in the terms recommended by President Roosevelt. I myself would prefer an unconditional termination of the assent at a definite time, but the alleged majority seem to think that their provision in this regard is preferable, and I am willing to accept it. The committee reporting the bill deemed, after careful consideration, that it was wisest to provide for the renewal of the franchise, if it may be called such, without absolute termination as recommended by him.

Again he says:

Further reflection suggests a sixth condition, viz:

The license should be forfeited upon proof that the licensee has joined in any conspiracy or unlawful combination in restraint of trade, as is provided for grants of coal lands in Alaska by the act of May 28, 1908.

That provision is attempted to be complied with in this bill by making the right of assignment conditioned upon the approval of the Secretary of War. In order to make it more certain that monopoly will be prevented, I have offered an amendment which I propose to ask the Senate to vote upon, which is to be inserted after the word "otherwise," in line 18, on page 2, and reads as follows:

Provided further, That if at any time said Connecticut River Co., or its assigns, shall be owned or controlled by any device, permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that it shall form a part of, or in any way effect any combination, or be in anywise controlled by any combination in the form of an unlawful trust, or enter into any contract or conspiracy in restraint of trade in the production, development, generation, transmission, or sale of any power or electrical energy, then the permit herein granted may be forfeited and canceled by the Secretary of War through appropriate proceedings instituted for that purpose in the courts of the United States.

It seems to me that, with the adoption of that amendment, the recommendations of President Roosevelt would be fully complied with in this respect.

Mr. BURTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Washington yield to the Senator from Ohio?

Mr. JONES. I do.

Mr. BURTON. Has Congress ever inserted a similar provision to that in any bill granting a privilege?

Mr. JONES. I do not see why that makes any difference. If we have not done so, it is time to do it now.

Mr. BURTON. We have had frequently before us propositions to incorporate in tariff bills provisions to the effect that if in any industry there should be a combination or trust the duty on the article involved should be withdrawn. And has not Congress invariably refused to insert such a provision?

Mr. JONES. There is no argument against the adoption of the proposition in this case.

Mr. BURTON. Is it not a fair and just way to leave the execution of the antitrust law to the courts under general regulation, without seeking in this way to bring about their execution, making one rule in one case and another rule for all the rest of the country in every other form of enterprise?

Mr. JONES. That same question might be asked with reference to some of the other provisions of this bill. There are new provisions in the proposed bill. You ask for a policy not applied to other interests. Why not leave them out? Why not follow the same course as heretofore in regard to these matters?

We are willing and anxious to prevent the evils complained of and feared, but we propose to do it in an effective way, and not by an ineffective provision that can result in nothing but a burden on the people.

Mr. THOMAS. Mr. President.

The PRESIDENT pro tempore. Does the Senator from Washington yield to the Senator from Colorado?

Mr. JONES. Certainly.

Mr. THOMAS. I notice that the proposed amendment provides that, under the conditions which are recited, the franchise may be forfeited. Why not insert the word "shall" as a substitute for the word "may"?

Mr. JONES. I would be perfectly satisfied to do that.

Mr. THOMAS. So as to make it mandatory upon the Secretary of War to proceed under those circumstances.

Mr. JONES. That will be agreeable to me, and I shall modify my amendment to that effect. That will more certainly effect the purpose I desire. Then I desire to suggest to the Senator from Ohio [Mr. BURTON] that if that provision were adopted in this bill, it should be adopted, of course, in every bill of a similar character, so as to apply throughout the country everywhere.

I am going to suggest in my remarks a little further on, but I mention it right here, that I think we ought to frame a general legislative act embodying all the provisions of this bill except the proposition to make an annual charge, and put in it a proposition like this to prevent monopolies. Then we would have a good law under which people could come and ask for these permits and develop power all over the country. I will also suggest to the Senator from Ohio that that very provision, almost word for word, was inserted in the coal-land laws of Alaska, so that it is not entirely without precedent.

Mr. President, I have not read the fourth recommendation of President Roosevelt. We have complied in this bill with every proposition that he recommends in order to prevent monopoly, in order to bring about conservation, in order to have good legislation for the control of these water powers, except the fourth. The fourth proposition reads like this:

Fourth. There should be a license fee or charge which, though small or normal at the outset, can in the future be adjusted so as to secure control in the interest of the public.

I have already shown the principal reasons why I do not think that proposition should be put in the bill, and why I do not think that it would be really in the interest of the public, or, if it should be in the interest of the public, that it is right to impose a burden of that kind upon a particular locality, which must be for the benefit of localities and people not paying the charges. Anything that is in the interest of the general public should be paid for and discharged by the general public. I am satisfied that if President Roosevelt would consider this proposition from every angle he would not insist upon a proposition of this character. While he may be positive in his opinions, he never hesitates to change his views when he finds he is wrong.

Mr. President, we who oppose the provision for an annual charge are not in favor of giving the consent of Congress to the building of this dam unconditionally, as some allege. We are in favor of requiring the work to be commenced within a certain time. We are in favor of having it completed by a definite time. We are in favor of requiring the dam and locks to be built in accordance with plans to be approved by the War Department and that such dam and locks shall be sufficient not only for the present but for all prospective navigation needs. We are in favor of requiring the lock or locks to be turned over to the Federal Government free of cost. We are in favor of requiring the gates of the locks and such electrical power as may be necessary to light and operate the same to be furnished free. We are in favor of no assignment of the rights of the company, except under the approval of the Secre-

tary of War or under the decree of a court of competent jurisdiction. We are in favor of a strong legislative provision against this company or its property becoming a part of any conspiracy or combination, or its being controlled in any way so as to operate or be used in restraint of trade. We are in favor of such permits being granted only when and where there are effective local agencies to regulate the prices to be charged, so that consumers of power may have to pay only just and reasonable rates, and that the Interstate Commerce Commission shall have authority over the rates charged for interstate power. These conditions are all clearly within the power and right of the Federal Government to impose. They are all in the interests of the public and place no unnecessary burdens on consumers. Adopt such a policy, pass such a law as a model for such future legislation, and you secure real conservation that will benefit the public and not enrich the "special interests." With such a measure waste will cease, navigation will be promoted, monopoly will be prevented, the public will secure power at just and reasonable rates, and all the objects and purposes of real conservation will be accomplished, and that too without any unnecessary attacks upon consumption.

Mr. President, I am not going to discuss the legal questions concerned with this matter at any length. This has already been fully done. The real question of the right of the Federal Government to exact a charge for the power developed by the construction of a dam after navigation has been fully protected by a company at its own expense and on its own lands has never been presented to the courts. Those cases relied upon as substantiating this right are not at all in point. In neither of them was the commerce clause of the Constitution involved or mentioned, but each was decided upon the particular facts of the case.

In Kaukauna Water Power Co. *v.* Green Bay & Mississippi Canal Co. (142 U. S., 254) a grant of land had been made to the State of Wisconsin by the Federal Government for the improvement of navigation in the Fox River. The State had accepted the grant and passed an act for the improvement of the river. It acquired, by appropriate proceedings, the necessary lands, waters, or materials for the use of the public in the construction of the necessary improvements and paid for the same. In the act passed by the Legislature of the State of Wisconsin it was provided that—

> Whenever a water power shall be created by reason of any dam erected or other improvement made on any of said rivers, such water power shall belong to the State, subject to the future action of the legislature.

The sole question in this case, as stated by Mr. Justice Brown, was "whether the act of the Legislature of Wisconsin of August 8, 1848, reserving to the State the water power created by the erection of the dam over the Fox River, as construed by the supreme court of the State, and the proceedings thereunder, operate to deprive the plaintiffs in error of their property without due process of law." The powers of the Federal Government were not involved in any way.

Green Bay & Mississippi Canal Co. *v.* Patten Paper Co. (172 U. S., 58), the other case relied upon, grew out of the same facts and did not involve the consideration of the construction of the commerce clause of the Constitution. The case rested and was decided upon the grants and contracts connected with it. The syllabus states the basis for the decision very clearly, as follows:

> Under the legislation and contracts set forth in the opinion of the court in this case the water power incidentally created by the erection and maintenance of the dam and canal for the purpose of navigation in Fox River is subject to control and appropriation by the United States, and the plaintiff in error is possessed of whatever rights to the use of this incidental water power that could be granted by the United States.

In this case the United States made certain grants to the State of Wisconsin for the improvement of navigation in Fox River. The State accepted the grant and undertook the improvement, and in its legislative act provided that—

> Whenever a water power shall be created by reason of any dam erected or other improvement made on any of said rivers, such water power shall belong to the State, subject to the future action of the legislature.

The right of the State to make this reservation was not questioned. In 1853 the State, by appropriate legislation, granted and transferred to a certain company the uncompleted works of improvement and "all and singular the rights of way, dams, locks, canals, water power, and other appurtenances." Evidently this water power, not by force of the commerce clause of the Constitution but by direct grant, became the property of the United States and, of course, was subject to disposition by it, as by any other owner. The court, by Justice Shiras, said:

> Whether the water power incidentally created by the erection and maintenance of the dam and canal for the purpose of navigation in Fox River is subject to control and appropriation by the United States, owning and operating those public works, or by the State of Wisconsin, within whose limits Fox River lies, is the decisive question in this case.

Does the court proceed to consider this question and decide it on the powers given to the United States by the commerce clause of the Constitution? Not at all. But the court says:

> Upon the undisputed facts contained in the record we think it clear that the canal company is possessed of whatever rights to the use of this incidental water power that could be validly granted by the United States.

What the United States could grant depended not upon the commerce clause of the Constitution but "upon the undisputed facts contained in the record." What were the facts in the record? By what right would the United States control these water-power privileges? This is clearly stated by the court as follows:

> And, subsequently, by act of March 23, 1871, the State authorized the Green Bay & Mississippi Canal Co., which had become the owner of the entire improvement works, lands, and water powers by purchase at the foreclosure sale, to sell and dispose of the same to the United States.

And, in the opinion of the court, this, in effect, was done. The court said:

> The legal effect and import of the sale and conveyance by the canal company were to vest absolute ownership in the improvement and appurtenances in the United States, which proprietary rights thereby became added to the jurisdiction and control that the United States possessed over the Fox River as a navigable water.

Could anything be clearer? The court recognized the right to these waters and water powers as a proprietary right. As a proprietor and owner by actual grant and purchase, of course the United States could deal with them as it saw best, and it was by virtue of this proprietary right and not because of its powers under the commerce clause that the United States did deal with them.

That the only right which the Federal Government has in the Connecticut River is the right to control, protect, and promote navigation is settled by direct decision of the Supreme Court, and that all other rights or property in said stream are subject only to the State laws and State control is equally well settled by a long line of decisions.

In Pollard's Lessee *v* Hagan et al., (3 How., 212) the court says:

> Although this is the first time we have been called upon to draw the line that separates the sovereignty and jurisdiction of the Government of the Union and the State governments over the subject in controversy, many of the principles which enter into and form the elements of the question have been settled by previous well-considered decisions of this court, to which we shall have occasion to refer in the course of this investigation.

After discussing conditions and the powers of the Federal Government while Alabama was a Territory, the court says:

> And this brings us to the examination of the question whether Alabama is entitled to the shores of the navigable waters and the soils under them within her limits.

After discussing the source of title of the United States to the lands embraced in the proposed State of Alabama and the right by the United States acquired thereunder, the court says:

> Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine is to deny that Alabama has been admitted into the Union on an equal footing with the original States, the Constitution, laws, and compact to the contrary notwithstanding. But her rights of sovereignty and jurisdiction are not governed by the common law of England as it prevailed in the colonies before the Revolution, but as modified by our own institutions. In the case of Martin and others *v.* Waddell (16 Pet., 410), the present Chief Justice, in delivering the opinion of the court, said: "When the Revolution took place, the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable water and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution." Then, to Alabama belong the navigable waters and soils under them in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights.

The court closes its opinion as follows:

> By the preceding course of reasoning we have arrived at these general conclusions: First, the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States, respectively.

Shively *v.* Bowlby (152 U. S., 1) discusses at great length the rights of the State and of the Federal Government in navigable waters, and distinguishes various decisions rendered by the court. The court, at page 48, says:

> We can not doubt, therefore, that Congress has the power to make grants of lands below high-water mark of navigable waters in any territory of the United States whenever it becomes necessary to do so in order to perform international obligations or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States or to carry out other public purposes appropriate to the objects for which the United States hold the Territory.

After thus asserting the power of the Federal Government over the property in a territory the court says:

IX. But Congress has never undertaken by general laws to dispose of such lands. And the reasons are not far to seek.

The Congress of the United States in disposing of the public lands has constantly acted upon the theory that those lands, whether in the interior or on the coast above high-water mark, may be taken up by actual occupants in order to encourage the settlement of the country; but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; and, being chiefly valuable for the public purposes of commerce, navigation and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government, but unless in case of some international duty or public exigency shall be held by the United States in trust for the future States, and shall vest in the several States, when organized and admitted into the Union, with all the powers and prerogatives appertaining to the older States in regard to such waters and soils within their respective jurisdictions; in short, shall not be disposed of piecemeal to individuals as private property, but shall be held as a whole for the purpose of being ultimately administered and dealt with for the public benefit by the State after it shall have become a completely organized community.

On page 58 the court continues as follows:

The United States, while they hold the country as a Territory, having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tidewaters. But they have never done so by general laws, and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters and in the soil under them to the control of the States, respectively, when organized and admitted into the Union.

Mr. President, the policy that we may adopt and provide for in this bill ought to be such that it can be applied to all sections of the country. We are required to determine what shall be the policy of Congress with reference to grants of this kind. We ought to do it. We ought to adopt such a policy as will permit the development of water power all over the country for the people's benefit. There are water powers all over the United States that are waiting for development, that ought to be developed, that ought to be made to benefit and serve the interests of the people of the country. No other section of the country is more interested in a wise, fair, and equitable decision of this question than the section of the country that I in part represent.

It is estimated that upon the Columbia River and its tributaries there can be developed twenty-five or thirty million horsepower five times as much horsepower as is now developed and in use in the entire United States. So the policy that we are to adopt with reference to this development is an important one to us. This is one reason why I am opposed to the imposition of this charge, because I think that it is unwise, that it is unfair, that it is unjust, that it is inequitable, and that it can not be justified upon any basis whatever when the interests of the consumers are considered; and they, really, are the only ones in whom I am especially interested.

I believe the people of my State are better able than anybody else to determine what shall be just, fair, and reasonable rates to be charged for power developed in my State. They know the situation. They know the local conditions. They know the surroundings. We believe we can say what is a fair, just, and reasonable charge better than the people of any other section of the Union. To take any other position is to assume that our people are not so capable of looking after their own affairs as some one else who knows nothing of local conditions. I deny this most emphatically. We have provided ample means for the protection of our people from exorbitant charges. We have provided for a public-utilities commission. I desire to put in the RECORD, and I desire to read to the Senate, the provisions of our law enumerating the powers that we have given to the public-utilities commission over matters of this kind, and the law speaks for itself and needs no statement from me as to its efficiency.

Article 6 of chapter 117 of the session laws of 1911, providing for a public service commission, defines the powers of the commission in relation to public service companies:

SEC. 54. Charges and service of gas companies, electrical and water companies to be fixed by commission.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint as herein provided, that the rates or charges demanded, exacted, charged, or collected by any gas company, electrical company, or water company for gas, electricity, or water, or in connection therewith, or that the rules, regulations, practices, or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices, or contracts to be thereafter observed and enforced, and shall fix the same by order, as hereinafter provided.

Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat, or power, or the purity, volume, and pressure of water supplied by any gas company, electrical company, or water company, as the case may be, is insufficient, impure, inadequate, or inefficient, it shall order such improvement in the manufacture, distribution, or supply of gas, in the manufacture, transmission, or supply of electricity, or in the storage, distribution, or supply of water, or in the methods employed by such gas company, electrical company, or water company as will in its judgment be efficient, adequate, just, and reasonable.

Whenever the commission shall find, after hearing, that any rules, regulations, measurements, or the standard thereof, practices, acts, or services of any such gas company, electrical company, or water company are unjust, unreasonable, improper, insufficient, inefficient, or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements, or the standard thereof, practices, acts, or services to be thereafter furnished, imposed, observed, and followed, and shall fix the same by order or rule, as hereinafter provided.

Mr. President, we do not desire to have a policy adopted in the passage of this bill which will be applied to our section of the country and will interfere with the rights and powers and jurisdiction of our public-service commission. We believe this commission can fully protect the consumers, the people who buy water power, from extortionate, unfair, unjust, and unreasonable charges. We are ready and willing to join hands with our friends from Connecticut and put into this bill the necessary language to make reasonable and full provision for navigation, if you please, at the locality to be benefited. We are ready and willing to join with them in putting into the bill every provision that is necessary to prevent monopoly. Then we think we can trust the local body, the local organization, to see that the people—and they are the ones in whom we are really interested; their welfare is really the welfare that is to be conserved by the passage of this legislation—shall get their water power and their electrical power at fair, just, and reasonable rates. I am willing to go this far with reference to this bill. I am willing to make it within the power of the Secretary of War to refuse a permit until it is clearly shown that the local authorities have ample legislative power and have provided the necessary State agencies to protect the people of the State, the people of the locality, against extortion. What more can anyone ask? What good purpose can be served by any other provision? Mr. President, I am heartily in favor of real conservation, but I am unalterably opposed to unnecessary and unjust taxation.

Mr. O'GORMAN. Mr. President, much of the discussion in relation to the pending bill has been devoted to a consideration of public policy rather than to a careful appreciation of the limitations and restraints imposed upon the National Government by the Constitution. I am opposed to the bill, because it recognizes a principle that can not be supported by any provision of the Constitution.

Prior to the Revolution the Crown of England owned the waters of the Connecticut River and the soil thereof. At the time of the Revolution, when Connecticut became an independent State, it succeeded to the rights theretofore possessed by the King of England. The State of Connecticut became the owner of the Connecticut River and the soil and bed of the stream. It had absolute power and dominion over the river and the soil of the stream. This was so held by Chief Justice Taney in Martin *v.* Waddell (16 Peters, 367). When the Constitution of 1787 was adopted, Connecticut, in common with the other States, conferred upon the Federal Government certain enumerated powers and authorities. The only power conferred upon the Federal Government at the time of the adoption of the Constitution, so far as it affected the ownership and dominion of the rivers in the various independent States, as they then were, was the so-called "commerce clause" of the Constitution, which provided that the Congress should have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

It is now claimed by the advocates of this obnoxious measure that when the thirteen independent States, sovereign in their ownership of the various rivers, conferred upon the Federal Union the right to regulate commerce with foreign nations and among the several States the States practically surrendered the sovereign powers that they were then exercising over their own rivers; because if the views of those who defend this legislation are followed to a logical conclusion, the States exercise no rights in the rivers of the country which the Federal Government is bound to respect.

Under this language of the Constitution, empowering the Federal Government to regulate interstate commerce, the courts from time to time declared that the Federal Government had the right to do whatever it considered necessary for the purpose of promoting the navigability of the streams and the rivers, but that is the only authority that may be invoked by the Federal Government respecting this subject. The Federal Government has had conferred upon it the naked power to go into any river and do what it deems essential for the purpose of promoting the navigability of the river.

Mark you, that is simply a power to do a specific thing. It is a mere easement and has been so declared by the Supreme Court. The advocates of this measure insist that the naked power to do a specific thing carries with it practically an appropriation of property rights—a conclusion that can not be indulged in without doing violence to simple, plain, and unambiguous language.

The claim, in brief, is made that if, as an incident of the improvement the Federal Government may make in promoting the navigation of a river, a surplus water power is created, that water power so created belongs to the Federal Government and may be leased or sold or made a source of revenue to the Government. That is an absolutely erroneous theory, which first found support in the careless reading of two decisions of the Supreme Court of the United States—Kaukauna *v.* Green Bay (142 U. S., 254) and Green Bay *v.* Patten (172 U. S., 58). Certain Senators persist in their error, notwithstanding the fact that their attention has been called to the circumstance that when the Supreme Court held in the Wisconsin cases that the Federal Government had a right to the excess water power created as an incident of the improvement, the ruling was based upon an express grant from the State of Wisconsin to the Federal Government, and not because of any rights believed to be secured under the commerce clause.

In the case of Illinois *v.* People (146 U. S. Sup. Ct. Repts.) the court said:

> It is the settled rule of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters within the limits of the several States belong to the respective States within which they are found, and with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation, so far as may be necessary for the regulation of commerce with foreign nations and among the States. This doctrine has often been announced by this court, and is not questioned by counsel of any of the parties.

The contention has been urged upon us during this discussion that notwithstanding the constitutional restraints the time has arrived when the Federal Government should have control of the disposition of these valuable water powers of the country. But with respect to that I should like to call attention to the views of the Supreme Court in the case of Kansas *v.* Colorado (206 U. S., p. 46), where it is said:

> The Government of the United States is one of enumerated powers; that it has no inherent powers of sovereignty; that the enumeration of the powers granted is to be found in the Constitution of the United States, and in that alone; that the manifest purpose of the tenth amendment to the Constitution is to put beyond dispute the proposition that all powers not granted are reserved to the people; and that if in the changes of the years further powers ought to be possessed by Congress they must be obtained by a new grant from the people. While Congress has general legislative jurisdiction over the Territories, and may control the flow of waters in their streams, it has no power to control a like flow within the limits of a State, except to preserve or improve the navigability of a stream; that the full control over those waters is, subject to the exception named, vested in the State.

In United States *v.* Rio Grande (174 U. S., 709), Mr. Justice Brewer, alluding to the limited and restricted function of the National Government in relation to navigation, said:

> The Hudson River runs within the limits of the State of New York. It is a navigable stream and a part of the navigable waters of the United States, so far at least as from Albany southward. One of the streams which flows into it and contributes to the volume of its waters is the Croton River, a nonnavigable stream. Its waters are taken by the State of New York for domestic uses in the city of New York. Unquestionably the State of New York has a right to appropriate its waters, and the United States may not question such appropriation, unless thereby the navigability of the Hudson be disturbed.

These authorities establish the proposition that the ownership of the waters and soil of navigable streams is in the State, and that the Federal Government has no right or power to interfere with the State's property except for the purpose of preserving or improving the navigability of a river. The surplus water or power produced as an incident to the public improvement made by the Government in aid of navigation belongs to the State. Under the commerce clause the Government acquires no title or property interest whatever in the river or bed thereof. The Constitution confers a naked power to regulate commerce; nothing more. The title of the State remains unimpaired, both as to the water and as to the soil. There is no power expressed or implied in the Constitution justifying the claim that the Federal Government may appropriate such surplus water or power. The assertion of such a right would constitute an interference with and confiscation of the property of the State by the Federal Government. The State is the owner of its natural resources, and, within its properly reserved power, has an absolute right to make use of its property, including the water power of its rivers, subject only to the limitation that it can not impede commerce and navigation.

The right of the Government to sell or lease its own property does not justify this attempted appropriation of the property of a State. Section 3, Article IV, of the Constitution is a grant of power to the United States of control over its own property, but what belongs to the State can not be the property of the Federal Government.

The United States is not authorized by any of the enumerated powers to engage in the business of manufacturing, transmitting, or selling electrical power, whether at cost or for a profit; and the commerce clause was never designed to permit the Federal Government to secure revenue or profit as an incident to the promotion of the facilities of navigation.

Federal expenditures must be reimbursed exclusively through taxation. The function of taxation is to secure sufficient money to perform the delegated governmental functions. This power was limited by section 8, Article I, as follows:

> The Congress shall have the power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

The Constitution merely permits regulation in the interest of navigation and commerce by the Federal Government. Regulation does not mean appropriation or confiscation of the rights of a State in its natural resources.

The contention in favor of the right of the Federal Government to lease the excess water power is without authority or reason to sustain it. Kaukauna Co. *v.* Green Bay (142 U. S., 254) and Green Bay Co. *v.* Patten (172 U. S., 58) are not in point and do not support the proposition. The commerce clause was not involved in either case. In the former case the controversy arose between a State and a riparian owner, and in the latter case the right of the Federal Government grew out of a grant and was not based upon the commerce clause.

The claim is made that the Government's improvement creates the excess power, but the fact is that the water that produces the power concededly belongs to the State, and the only effect of the improvement by the Government is to enlarge the potentiality of the State's water at the point of improvement.

The Government has no more right to claim ownership of the increase of the water than the State or a riparian owner would have to require the Government to make compensation for impairment of the stream at other points resulting from the improvement. Where depreciation is necessarily caused by the improvement for navigation the State must bear the loss; where appreciation results from the improvement the State is entitled to the gain. In either case the property affected belongs to the State. As we have seen, the title of the State includes the water as well as the bed of the rivers. The right of the State, under its title, to appropriate the water, subject only to the power of the Government under the commerce clause, is recognized by the cases cited, and the State's title necessarily excludes dominion over its waters by the Government except for the single purpose above indicated. The Government may improve navigation; it can not confiscate the property of the State.

It is claimed that as the power of the Government can be granted or withheld, the Government has the right to impose conditions upon the grant. I can not approve of that extraordinary proposition. Every function delegated to the Government presumably is to be exercised in good faith. The States granted this power to the Federal Government, assuming that it would be used for the legitimate promotion of commerce, and, as an incident to that, for the promotion of the navigability of the several streams and rivers.

It has been said here within the last day or two that this right, now possessed by the Federal Government, is so complete that there is no power elsewhere; there is no power in the courts to coerce the Federal Government to assent to the building of a dam in a river, and that, inasmuch as that power remains in the Government, it may impose any condition, however onerous, however foreign to the expectations of the fathers of the Republic, who drafted the Constitution; and in that connection it is claimed that it has a perfect right to utilize these surplus waters for the purpose of creating a revenue with which to meet the expense that the Government incurs in making the particular improvement. But that contention is made in disregard of the express provision in the Constitution that the revenue to meet public expenditures is to be raised in a way specifically pointed out in that instrument.

We hear very much in these days of the usurpation of power by the Federal Government. When the general dam acts were passed by Congress in 1906 and 1910 they contained provisions which involved a clear usurpation of power, and they should be repealed at once. The Government undertook by that legislation to withhold its consent to reasonable and salutary measures looking to the promotion of commerce, unless it were permitted to secure a revenue in a method never contemplated by the Constitution nor by those who drafted that instrument.

I am not much concerned about the pending bill, further than that it gives recognition to what I conceive to be a vicious principle. If there is any general sentiment throughout the country that the functions of the Federal Government should be enlarged with respect to the water powers of the land, let the right be conferred upon the Federal Government in a legitimate way. Let the Constitution be amended, and, if the States are willing to surrender more of their reserved powers, let the States do so. But until this change is brought about in a constitutional method, I believe it is the duty of every Senator to resist these encroachments, insidiously made, upon the reserved rights of the States. If the Federal Government is permitted, in disregard of constitutional restraints, to take property from the States, where will its operations stop? If it may appropriate and engage in the sale of electrical power belonging to a State, as was said the other day by the Senator from Colorado [Mr. THOMAS], why may it not go further and operate a trolley system or a manufacturing plant or do other things in disregard of the limitations of the Constitution?

The greatest security against encroachments upon the rights of the people is to be found in confining the Federal Government to the powers specifically granted in the Constitution. This bill can not be adopted, as it is proposed, without doing violence to the organic law of the land, and without doing a lasting injury to the State of Connecticut as well as to every other State in the Union.

Mr. McLEAN obtained the floor.

Mr. BRANDEGEE. We are approaching so near the hour at which we agreed to take the vote that I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Connecticut suggests the absence of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cummins	Lodge	Simmons
Bacon	Dillingham	McCumber	Smith, Ariz.
Bankhead	du Pont	McLean	Smith, Ga.
Borah	Fall	Martin, Va.	Smith, Md.
Bourne	Fletcher	Martine, N. J.	Smith, S. C.
Brady	Foster	Nelson	Smoot
Brandegee	Gallinger	O'Gorman	Stephenson
Bristow	Gardner	Oliver	Stone
Burnham	Gore	Overman	Swanson
Burton	Gronna	Page	Thomas
Catron	Guggenheim	Paynter	Thornton
Chamberlain	Jackson	Percy	Tillman
Clapp	Johnson, Me.	Perkins	Townsend
Clark, Wyo.	Johnston, Ala.	Poindexter	Warren
Clarke, Ark.	Jones	Pomerene	Webb
Crane	Kenyon	Richardson	Works
Crawford	Kern	Root	
Culberson	Lea	Sheppard	
Cullom	Lippitt	Shively	

The PRESIDENT pro tempore. On the call of the roll of the Senate 73 Senators have answered to their names. A quorum of the Senate is present. The Senator from Connecticut will proceed.

Mr. McLEAN. The amendment which I offered this morning could not be printed in time for Senators to read it. I ask that it be read again.

The PRESIDENT pro tempore. The amendment will be again read.

The SECRETARY. Add at the end of section 1 the following additional proviso:

And provided further, That if said company shall neglect or refuse to pay any charge or return demanded of said corporation by the Secretary of War, either by order or under any contract, and such neglect or refusal is based on the ground that said charge or return is invalid or unconstitutional and not within the power of Congress to require, such neglect or refusal on the part of the company shall not affect the rights of said company to hold and exercise all the powers, rights, and privileges granted in this act and in any suit brought against said corporation for the collection of said charge or return the said corporation shall have the right to enter its proper plea to test the constitutionality or validity of said charge or return, and the courts shall take cognizance of the same, and nothing in this section shall be understood as committing the Government to a policy of imposing or not imposing such charges or returns as are herein described from any other company or corporation seeking the assent of Congress under like or similar circumstances.

Mr. McLEAN. Mr. President, before this measure is lowered or raised to its last resting place I should like to make a few remarks as the nearest friend of the victim in a geographical sense. In a material way I have no further interest in this question than that of my fellow citizens in general, but in view of the fact that my home is close to the spot where this dam will be built, or would be built but for the fact that the surplus water would wash away State sovereignty and incidentally undermine the foundation of the Constitution itself, I am persuaded that it is my duty to call the attention of the Senate to the real character of the about-to-be deceased.

I believe that if the Senators who have opposed this measure lived where I do they would realize that it is sometimes wise and sometimes profitable to meet conditions and their demands rather than take counsel of speculation and improbability.

First, I wish to call the attention of the Senate to the fact that the precise question presented by this measure is susceptible of two answers. We can pass the bill authorizing the development of this water power subject to the condition imposed by the executive department, which we will say is a confiscation of an infinitesimal part of the net income, or we can defeat this measure and in that way, to use a western term, we can confiscate the whole proposition.

I think I can safely assume that no Senator wants to subscribe to the policy of preventing the creation of wealth in this country. We would have no respect for a government that prevented the development of its natural resources through fear that when developed they could not be controlled.

I do not believe it is necessary, Mr. President, for this Government to wrap its latent wealth in the napkin of congressional impotency, through fear that the State or the Nation will reap where it has not sown.

The first section of the bill presents a solemn legal question. It is a question that has been discussed on the floor of the Senate for nearly a week. The Senator from Washington [Mr. JONES], who preceded the junior Senator from New York [Mr. O'GORMAN], a few minutes ago declared that he would not discuss the legal question involved, because no case presenting a similar condition of facts had ever been presented to the Supreme Court. The Senator from New York who preceded me began his remarks this afternoon with the statement that the bill had been discussed for many days upon the theory that the policy involved was objectionable, but that he wished to call the attention of the Senate at this late hour to the fact that the bill is offensive to the Constitution, and the Senator from New York is absolutely certain that the question presented by this bill has been determined by the Supreme Court.

So, Mr. President, it has been debated for nearly a week, with almost as many opinions as there have been debates. A few days ago two Senators of great learning in constitutional law cited precisely the same case in defense of diametrically opposed conclusions.

It seems to me it must be evident that the question, and the real question, which we must have decided before we can legislate intelligently upon this question at all must be answered by the Supreme Court of the United States, and until that question is answered by the Supreme Court the situation will present to Congress a condition full of doubt, full of trouble, and full of loss, not only to the people of Connecticut, but to the people of every other State in the Union.

I think it is clear that unless we find a way out for this measure Congress will have put an end to the development of water powers in this country. This question has been agitated for years; commissions have been appointed, composed of able lawyers; reports have been received full of valuable data, maps, and so forth, and nothing has been done.

The Senator from Ohio [Mr. BURTON] and the Senator from Nevada [Mr. NEWLANDS] have presented unanswerable arguments why Congress should lose no time in dealing with this question in an intelligent and effective way in conjunction with the several States.

It is my belief, Mr President, that where the State authorities are satisfied and have granted full authority to the capital interested, where the representatives of that State in Congress are satisfied with the proposed plan, when the individuals who are to furnish the capital are satisfied, the least that Congress can do is to find some way whereby the question will be decided which must be decided before we can agree upon a general law that will lead to a final disposition of this important question. I repeat, it is evident that the question involved is one that the Supreme Court alone can answer, and it is for this reason that the amendment I have offered should be adopted. Many valuable suggestions have been made in relation to this measure by the opposition. It is not necessary for me to disagree with anyone in appealing for a reprieve of this measure, and it is not necessary for any Senator here to disagree with me so far as the real, vital question is concerned.

The Senator from Minnesota [Mr. NELSON] presented objections to this measure because he disapproved the extension of the powers of administrative officers. He will remember that in this case we are dealing not with a Secretary of War but with the President of the United States, who we all know has a very intimate connection with legislation. We know that it is his duty to examine every bill that comes before Congress and return it with his disapproval if it seems to be his duty. It appears to me that we must solve this question upon some other basis than the one which requires a two-thirds vote of both Houses of Congress in order to be successful.

The Senator from California [Mr. WORKS] and the Senator from Idaho [Mr. BORAH] object to the bill because, as they claim, it is possible that the charge imposed may be put upon the ultimate consumer. Mr. President, the situation is that the people who live within the circuit of this proposed development of power want cheap power; they want cheap heat and cheap light; and it can not be contended that the development of 30,000 additional horsepower within 20 miles of 250,000 people, close to Hartford, can increase the present price of heat or power. If it has any effect at all, it must render it cheaper.

The people of Connecticut do not care whether they buy power of the United States Government or of the State of Connecticut or of an individual. What they want is cheaper heat and light and power; and it must be clear that they have everything to gain and nothing to lose if the bill passes, no matter whether the tax goes to the State of Connecticut in the first instance and is expended upon the highways or goes into the Treasury of the United States and is expended in improving navigation in the Connecticut River. In no event can it result in anything but an improvement in present conditions there.

And so we come right back to the real trouble. No matter from what angle we view this important subject, we shall never be in a position where we can draw a bill that will get more than 10 votes in this body until we know whether the tax proposed offends the Constitution or not. Congress can answer this question to-day, and it may find to-morrow that it has answered it incorrectly.

I am a firm believer in State rights; but, Mr. President, I believe in a government by brains and not boundary lines. I do not believe that any citizen of the United States should suffer an irreparable financial loss on account of the fact that he is also a citizen of a State, and I do not believe that a citizen of a State should suffer irreparable loss on account of the fact that he is also a citizen of the United States.

I think it will be utterly impossible for us to get an intelligent and effective solution of this problem until a case is presented to the Supreme Court which involves the critical issue which has been discussed here for more than a week. I believe that every Member of this body would vote for this bill but for the unfortunate precedent that they feel would be established. I do not think that the other objections to the bill which have been raised would be considered important factors enough to prevent the passage of the bill, but for the fear that it will operate as a precedent which Congress will be under obligation to follow in some other State.

Mr. President, if we attach a protest to this bill, such as is embodied in my amendment, a declaration that our purpose in approving the bill is not to establish a precedent that is to be followed in other States, but precisely the contrary, a declaration that we will pass this bill because we want to know what can be done by Congress without offending the Constitution, I can not conceive of any avenue that will lead to a final settlement of this question except the one that is pointed out to us by the only authority which can tell us what the Constitution means, namely, the Supreme Court.

There is another Senator who wishes to discuss this question, and while I might add many reasons to those already stated——

Mr. CLAPP. I would desire a moment before 4 o'clock, if the Senator could accommodate himself to my desire.

Mr. McLEAN. I only desire to make my point clear. I think in the future precisely the same political conditions will arise that are here to-day. We shall have the same shades of opinion, if we consign this bill to the grave, coming up next year and the year after—one Senator in favor of a general proposition because it goes a certain distance in one direction; his colleague opposed to it for that very reason; another Senator opposed to certain provisions because they go too far in another direction—and so between these extremes of opinion you will have as many shades as there are men debating the question, just as you have them to-day and have had them here for a week.

The precedents we can establish to-day are two. We can pass the bill, relying upon the fact that 100,000,000 sovereign people will be able later on to remove the obligations in this bill if they think it is unjust; and we can start the machinery to-day, and the only machinery that can be started, which will put us in a position where we can solve this problem later on; and it is a very important question. We can not tell without experience how it will or can be solved intelligently and economically, and we can not tell without the opinion of the Supreme Court what lines we can take or can not take under the Constitution.

We know that we have hardly ascended the foothills of the ranges that lie above and beyond us in the improvement of hydroelectric power. It is something that means millions upon millions of dollars to the people of this country. It seems to me that it would be wise to begin, if possible, and begin now, to put Congress in a position where, without any further delay, we can act in a way that will not prevent longer the development of the natural resources of this country as exemplified by the developed water power.

I wish to give notice that I shall offer the amendment which I have proposed in the nature of a substitute to the amendment offered by the Senator from Alabama [Mr. BANKHEAD]. If it is adopted, the Connecticut River Co. will test the right of the Federal Government to exact the proposed charge and the way will be cleared for future action.

Mr. CLAPP. Mr. President, I have no difficulty whatever in reconciling my views to the proposition that Congress has the power which is asserted in this bill, but, as I propose to vote against the bill, I would not want that vote hereafter to be used as an argument against my voting to sustain the power asserted in the bill.

I desire to say that in my judgment section 5, without being so intended by the author of the bill, puts it in the power of the men who hold the charter under the bill, if it becomes a law, either to force the United States Government to take this property or violate the pledge contained in the bill; and not only that, but in that event establishes a rule for determining the value of the property, which, of course, I could not assent to.

Therefore, unless section 5 be amended so as to relieve the Government of the possible burden the holders of the charter might some day impose upon it, I shall vote against the bill, although I believe in the fundamental principles of the measure.

Mr. NELSON. Mr. President, the amendment pending is the motion of the Senator from Alabama [Mr. BANKHEAD] to strike out all after line 18 in section 1 of the bill. The amendment offered by the Senator from Connecticut [Mr. McLEAN] is no substitute for that, because if that is stricken out the amendment of the Senator from Connecticut is of no value. It seems to me we ought to vote upon that question first.

Mr. McLEAN. On which question, may I ask the Senator?

Mr. NELSON. On the motion of the Senator from Alabama to strike out.

Mr. McLEAN. That, of course, entirely negatives the value of my amendment. If it is in order, Mr. President, I offer my amendment as an amendment to the amendment offered by the Senator from Alabama [Mr. BANKHEAD].

Mr. BANKHEAD. Mr. President, I beg to suggest to the Senator from Connecticut that while I am not very sure that we have a written rule on the subject the practice has been uniform, as far as I remember, that a committee may perfect its bill by amendments before other amendments are properly in order. Am I correct about that?

The PRESIDENT pro tempore. That is the usual custom, the Chair will suggest, if amendments are to be offered looking to perfecting the original bill.

Mr. BRANDEGEE. But can not a Senator offer an amendment to perfect a committee amendment?

The PRESIDENT pro tempore. Beyond a doubt.

Mr. BRANDEGEE. As a substitute?

The PRESIDENT pro tempore. Beyond a doubt.

Mr. BANKHEAD. Then does the Chair hold that the amendment offered by the Senator from Connecticut is to be voted upon before the amendment which the committee offered to strike out the proviso?

The PRESIDENT pro tempore. The Chair would hold that, if the Senator from Connecticut offers his amendment, as he states he does, as a substitute for the amendment submitted by the Senator from Alabama, it is in order. The question will be then upon the amendment submitted by the Senator from Connecticut to the amendment submitted by the Senator from Alabama.

Mr. McLEAN. On that question I ask for the yeas and nays.

Mr. OLIVER. Let it be read.

Mr. BORAH. I ask that the amendment be again read.

The PRESIDENT pro tempore. It will be again read.

The SECRETARY. Add at the end of section 1 the following additional proviso:

And provided further, That if said company shall neglect or refuse to pay any charge or return demanded of said corporation by the Secretary of War either by order or under any contract, and such neglect or refusal is based on the ground that said charge or return is invalid or unconstitutional and not within the power of Congress to require, such neglect or refusal on the part of the company shall not affect the rights of said company to hold and exercise all the powers, rights, and privileges granted in this act and in any suit brought against said corporation for the collection of said charge or return, the said corporation shall have the right to enter its proper plea to test the constitutionality or validity of said charge or return and the courts shall take cognizance of the same; and nothing in this section shall be understood

as committing the Government to a policy of imposing or not imposing such charges or returns as are herein described from any other company or corporation seeking the assent of Congress under like or similar circumstances.

The PRESIDENT pro tempore. The Chair will suggest that manifestly this is not an amendment to the amendment offered by the Senator from Alabama. It deals with an entirely different section.

Mr. BRANDEGEE. With the same section, of course.

Mr. McLEAN. It is precisely the same section. I propose to add the additional proviso at the end of section 1.

Mr. SHIVELY. It comes at the end of the amendment.

The PRESIDENT pro tempore. The Chair is clearly of the opinion that it is not an amendment to the amendment offered by the Senator from Alabama [Mr. BANKHEAD]; and the question will be first upon the amendment of the Senator from Alabama.

Mr. BURTON. Mr. President, is not that a proper amendment to add at the end of section 1? It explains and modifies a portion of the bill at the end of that section. Is it not in order to present that in the first instance?

Mr. BRANDEGEE. I want to make one suggestion in that connection. I think, if that amendment is added at the end of section 1, it being in the nature of a substitute for the amendment of the Senator from Alabama, it is equivalent to voting down the amendment of the Senator from Alabama, leaving section 1 as it would be with this amendment adopted. In that view of it, I thought it was in order as an amendment.

The PRESIDENT pro tempore. The Chair is clearly of the opinion that it is not an amendment to the pending amendment. The question is upon the amendment of the Senator from Alabama.

Mr. BRANDEGEE. I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. BRANDEGEE. I want to ask the Senator from Alabama if it is not necessary to make a change in that part of his proposed amendment which reads "amend by striking out of section 1, beginning after the word 'act,' in line 15, page 2"?

The PRESIDENT pro tempore. That modification of the amendment has already been made.

Mr. BRANDEGEE. Then, should it not propose to amend by changing the language so as to make it read "amend by striking out of section 1, beginning after the word 'otherwise,' in line 18, on page 2"?

The PRESIDENT pro tempore. That is precisely the form in which the amendment is, the Chair would suggest. The question is on the amendment submitted by the Senator from Alabama.

Mr. NEWLANDS. Mr. President, I should like to have the amendment stated.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. It is proposed to amend by striking out of section 1, beginning after the word "otherwise," in line 18, on page 2, the following:

And provided further, That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith. In fixing such charge, if any, the Secretary of War shall take into consideration the existing rights and property of said corporation and the amounts spent and required to be spent by it in improving the navigation of said river, and no charge shall be imposed which shall be such as to deprive the said corporation of a reasonable return on the fair value of such dam and appurtenant works and property, allowing for the cost of construction, maintenance and renewal, and for depreciation charges.

The PRESIDENT pro tempore. The question is on the amendment.

Mr. BANKHEAD. I ask for the yeas and nays, Mr. President.

Mr. McLEAN. A parliamentary inquiry, Mr. President.

The PRESIDENT pro tempore. The Senator from Connecticut will state it.

Mr. McLEAN. I understand that if the amendment offered by the Senator from Alabama is adopted, the amendment which I offered will never be in a position to take the place of the amendment offered by the Senator from Alabama. In other words, if that amendment is adopted, the Senate will not have the opportunity to vote for my amendment as a substitute.

The PRESIDENT pro tempore. The Senator from Connecticut can afterwards offer his amendment in any form that he may see fit to submit it. The question is on the amendment proposed by the Senator from Alabama [Mr. BANKHEAD], on which he has demanded the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON]. Not knowing how he would vote if present, I withhold my vote.

Mr. DILLINGHAM (when his name was called). In the absence of the senior Senator from South Carolina [Mr. TILLMAN], with whom I have a general pair, I withhold my vote.

The roll call was concluded.

Mr. MARTINE of New Jersey. I am authorized to announce the pair of the senior Senator from New Jersey [Mr. BRIGGS] with the Senator from West Virginia [Mr. WATSON].

Mr. SMITH of Michigan (after having voted in the negative). I observe that the junior Senator from Missouri [Mr. REED] has not voted. In view of the pair I have with him, and not knowing how he would vote if present, I withdraw my vote.

The result was announced—yeas 53, nays 29, as follows:

YEAS—53.

Ashurst	Curtis	Martin, Va.	Stephenson
Bacon	Fall	Myers	Stone
Bankhead	Fletcher	Nelson	Sutherland
Borah	Foster	O'Gorman	Swanson
Bourne	Gamble	Oliver	Thomas
Bradley	Gardner	Overman	Thornton
Brady	Gronna	Paynter	Warren
Bryan	Guggenheim	Percy	Webb
Catron	Johnson, Me.	Sheppard	Wetmore
Chamberlain	Johnston, Ala.	Shively	Williams
Clark, Wyo.	Jones	Simmons	Works
Clarke, Ark.	Kern	Smith, Ariz.	
Culberson	Lea	Smith, Md.	
Cummins	McCumber	Smith, S. C.	

NAYS—29.

Brandegee	Dixon	Lodge	Poindexter
Bristow	du Pont	McLean	Pomerene
Brown	Gallinger	Martine, N. J.	Richardson
Burnham	Gore	Newlands	Root
Burton	Jackson	Owen	Townsend
Clapp	Kenyon	Page	
Crane	La Follette	Penrose	
Crawford	Lippitt	Perkins	

NOT VOTING—13.

Briggs	Hitchcock	Smith, Ga.	Watson
Chilton	Kavanaugh	Smith, Mich.	
Cullom	Massey	Smoot	
Dillingham	Reed	Tillman	

So Mr. BANKHEAD's amendment was agreed to.

Mr. BORAH. I offer the amendment which I proposed a few days ago as a new section to the bill.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Idaho will be stated.

The SECRETARY. It is proposed to add at the end of the bill, as section 6, the following:

That the provisions of the act entitled "An act to regulate commerce," passed and approved on the 4th day of February, 1887, together with the amendments thereto, shall apply to any corporation or any person or persons engaged in transmitting hydroelectric power or electricity from one State, Territory, or District of the United States to any State, Territory, or District of the United States, or from one place in a Territory to another place in the same Territory or to any foreign country, and that the term "common carrier" as used in said act and the amendments thereto shall include companies engaged in transmitting hydroelectric power or electricity as aforesaid: *Provided*, That said act shall not apply to the transmission of hydroelectric power or electricity wholly within one State and not transmitted to or from a foreign country, from or to any State or Territory as aforesaid; that the rules prescribed in said act as to just and reasonable charges or rates and the procedure relative to other common carriers, in so far as applicable, shall apply to such company, person, or persons transmitting hydroelectric power or electricity as aforesaid, and to the fixing and establishing of just and reasonable charges or rates fully and completely.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Idaho.

Mr. BORAH. I call for the yeas and nays, Mr. President.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON], and therefore withhold my vote.

Mr. DILLINGHAM (when his name was called). I have already announced my pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. For that reason I withhold my vote. I desire that this announcement shall stand on all the votes on the bill, unless the Senator from South Carolina returns.

The roll call was concluded.

Mr. CULLOM. As there is apparently a unanimous vote in favor of this amendment, I will take the liberty of voting, notwithstanding my pair with the Senator from West Virginia [Mr. CHILTON]. I vote "yea."

The result was announced—yeas 82, nays 1, as follows:

YEAS—82.

Ashurst	Brady	Burton	Crane
Bacon	Brandegee	Catron	Crawford
Bankhead	Bristow	Chamberlain	Culberson
Borah	Brown	Clapp	Cullom
Bourne	Bryan	Clark, Wyo.	Cummins
Bradley	Burnham	Clarke, Ala.	Curtis

Dixon	Kenyon	Overman	Smith, S. C.
du Pont	Kern	Page	Smoot
Fall	La Follette	Penrose	Stephenson
Fletcher	Lea	Perkins	Sutherland
Foster	Lippitt	Poindexter	Swanson
Gallinger	Lodge	Pomerene	Thomas
Gamble	McCumber	Richardson	Thornton
Gardner	McLean	Root	Townsend
Gore	Martin, Va.	Sheppard	Warren
Gronna	Martine, N. J.	Shively	Webb
Guggenheim	Myers	Simmons	Wetmore
Jackson	Nelson	Smith, Ariz.	Williams
Johnson, Me.	Newlands	Smith, Ga.	Works
Johnston, Ala.	O'Gorman	Smith, Md.	
Jones	Oliver	Smith, Mich.	

NAYS—1.

Paynter

NOT VOTING—12

Briggs	Hitchcock	Owen	Stone
Chilton	Kavanaugh	Percy	Tillman
Dillingham	Massey	Reed	Watson

So Mr. BORAH's amendment was agreed to.

Mr. PAYNTER subsequently said: Mr. President, I desire to make a statement in view of the fact that I have voted for the bill and it contains the amendment adopted on motion of the Senator from Idaho [Mr. BORAH]. I voted against that amendment, not fully understanding its purport. After having read the amendment and understanding it, I want to say I most heartily concur in the principle expressed by it, and had I understood the amendment as it really is I should have voted for it and not against it. I thought it was subject to the same objection as was the provision stricken out by the amendment offered by the Senator from Alabama [Mr. BANKHEAD], but after reading the amendment I realized that it was not an effort to invade by the Federal Government what I believe to be the province of the States. If I were permitted to do so, I would change my vote upon that amendment, and if it can be done by unanimous consent I would be glad to be recorded as having voted for the amendment.

Mr. JONES. I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. After the word "otherwise," in line 18, page 2, it is proposed to insert the following proviso:

Provided further, That if at any time said Connecticut River Co., or its assigns, or its property shall be owned or controlled by any device, permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that it shall form a part of, or in any way effect any combination, or be in anywise controlled by any combination in the form of an unlawful trust, or enter into any contract or conspiracy in restraint of trade in the production, development, generation, transmission, or sale of any power or electrical energy, then the permit herein granted shall be forfeited and canceled by the Secretary of War through appropriate proceedings instituted for that purpose in the courts of the United States.

Mr. JONES. I ask for the yeas and nays on that amendment.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Washington, on which he demands the yeas and nays. Is there a second? [After a pause.] In the opinion of the Chair, not a sufficient number have seconded the demand.

Mr. JONES. I should like to have the other side of that. I think there were several Senators whom the Chair did not see who seconded the demand.

The PRESIDENT pro tempore. There were not a sufficient number. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. POINDEXTER. I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The junior Senator from Washington offers an amendment, which will be stated.

The SECRETARY. At the end of the amendment just agreed to it is proposed to add the following:

Said Connecticut River Co., its successors and assigns in the ownership of the water-power plant to be developed by and in connection with the dam referred to herein, shall pay to the Secretary of War 1 per cent of the net profits derived from the operation of said plant. The Secretary of War shall have authority to collect said charge and shall pay one-half of all sums so collected into the Treasury of the United States, and one-half thereof into the treasury of the State of Connecticut; and the Secretary of War shall have authority to examine the books of said company, its successors and assigns, for the purpose of ascertaining the profits thereof.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the junior Senator from Washington.

The amendment was rejected.

Mr. CUMMINS. Mr. President, I move to amend the bill by striking out section 5.

The PRESIDENT pro tempore. The Senator from Iowa moves to amend the bill by striking out section 5, which will be read.

The Secretary read as follows:

SEC. 5. That upon the termination for any cause whatever of the authority, rights, and privileges granted hereby, or any renewal thereof, the United States may renew the same or the grant may be made or transferred to other parties. Unless the grant is renewed to the original grantee or its assigns, as herein provided, the United States shall pay or require its new grantee to pay to said original grantees or its assigns, as full compensation, the reasonable value of the improvements and appurtenant works constructed under the authority of this act and of the property belonging to said corporation necessary for the development hereby authorized, exclusive of the value of the authority hereby granted. Said improvements and appurtenant works and property shall include the lands and riparian rights acquired for the purposes of such development, the dam and other structures, and also the equipment useful and convenient for the generation of hydroelectric power or hydromechanical power, and the transmission system from generation plant to initial points of distribution, but shall not include any other property whatsoever. Such reasonable value shall be determined by mutual agreement between the Secretary of War and the owners, and, in case they can not agree, then by proceedings instituted in the United States district court for the condemnation of such properties. The basis for determining the value shall be the cost of replacing the structures necessary for the development and transmission of hydroelectric power by other structures capable of developing and transmitting the same amount of marketable power with equal efficiency, allowance being made for deterioration, if any, of the existing structures in estimating such efficiency, together with the fair value of other properties herein defined, to which not more than 10 per cent may be added to compensate for the expenditure of initial cost and experimentation charges and other proper expenditures in the cost of the plant which may not be represented in the replacement valuation herein provided.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Iowa. [Putting the question.] By the sound the noes appear to have it.

Mr. CUMMINS. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON], and therefore withhold my vote.

Mr. SMITH of Michigan. I again announce my pair with the Senator from Missouri [Mr. REED]. If he were present, I should vote "nay."

Mr. STONE (when his name was called). I vote "yea." I desire to announce that my colleague [Mr. REED] is detained at home by the serious illness of his wife and by important business.

The roll call was concluded, and the result was announced—yeas 55, nays 27, as follows:

YEAS—55.

Ashurst	Crawford	Kern	Shively
Bacon	Culberson	La Follette	Simmons
Bankhead	Cummins	Lea	Smith, Ariz.
Borah	Curtis	McCumber	Smith, Md.
Bourne	Dixon	Martin, Va.	Smith, S. C.
Bradley	Fall	Myers	Stone
Brady	Fletcher	O'Gorman	Sutherland
Bristow	Gamble	Overman	Swanson
Brown	Gardner	Paynter	Thomas
Bryan	Gronna	Percy	Thornton
Catron	Johnson, Me.	Perkins	Tillman
Chamberlain	Johnston, Ala.	Poindexter	Williams
Clapp	Jones	Pomerene	Works
Clarke, Ark.	Kenyon	Sheppard	

NAYS—27.

Brandegee	Gallinger	Nelson	Smoot
Burnham	Guggenheim	Oliver	Stephenson
Burton	Jackson	Owen	Townsend
Clark, Wyo.	Lippitt	Page	Warren
Crane	Lodge	Penrose	Webb
Dillingham	McLean	Richardson	Wetmore
du Pont	Martine, N. J.	Root	

NOT VOTING—13.

Briggs	Gore	Newlands	Watson
Chilton	Hitchcock	Reed	
Cullom	Kavanaugh	Smith, Ga.	
Foster	Massey	Smith, Mich.	

So the amendment of Mr. CUMMINS was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDENT pro tempore. The bill having been read three times, the question is, Shall it pass?

Mr. ROOT. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I again announce my pair with the junior Senator from West Virginia [Mr. CHILTON]. If he were present, I should vote "yea."

The roll call having been concluded, the result was announced—yeas 74, nays 12, as follows:

YEAS—74.

Ashurst	Bradley	Burnham	Crane
Bacon	Brady	Catron	Cummins
Bankhead	Brandegee	Chamberlain	Curtis
Borah	Brown	Clark, Wyo.	Dillingham
Bourne	Bryan	Clarke, Ark.	Dixon

Fall	Kern	Page	Smith, S. C.
Fletcher	Lea	Paynter	Smoot
Foster	Lippitt	Penrose	Stephenson
Gallinger	Lodge	Percy	Stone
Gamble	McCumber	Perkins	Sutherland
Gardner	McLean	Pomerene	Swanson
Gore	Martin, Va.	Richardson	Thornton
Gronna	Martine, N. J.	Sheppard	Tillman
Guggenheim	Myers	Shively	Warren
Jackson	Nelson	Simmons	Wetmore
Johnson, Me.	O'Gorman	Smith, Ariz.	Williams
Johnston, Ala.	Oliver	Smith, Ga.	Works
Jones	Overman	Smith, Md.	
Kenyon	Owen	Smith, Mich.	

NAYS—12.

Bristow	Crawford	Newlands	Thomas
Burton	du Pont	Poindexter	Townsend
Clapp	La Follette	Root	Webb

NOT VOTING—9.

Briggs	Cullom	Kavanaugh	Reed
Chilton	Hitchcock	Massey	Watson
Culberson			

So the bill was passed.

MEMORIAL ADDRESSES ON LATE REPRESENTATIVES FROM PENNSYLVANIA.

Mr. OLIVER. Mr. President, on the 7th of this month I gave notice that on March 1 I should ask the Senate to consider resolutions commemorative of the life, character, and public services of Hon. HENRY H. BINGHAM, Hon. GEORGE W. KIPP, and Hon. JOHN G. MCHENRY, late Members of the House of Representatives from the State of Pennsylvania. I wish to withdraw that notice and to give notice that I shall ask the Senate to consider such resolutions on Thursday, February 27, at such hour as may be convenient for the calling up of the same.

IMMIGRATION OF ALIENS—VETO MESSAGE.

Mr. LODGE. Mr. President, I move that the Senate proceed to reconsider the bill (S. 3175) to regulate the immigration of aliens to and the residence of aliens in the United States, which was returned by the President with his objections; and on that motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STONE. Mr. President, I wish to inquire just what the effect of the motion would be. If the motion were agreed to, would its effect be to reconsider the action of the Senate, or would it be a vote upon whether the Senate agrees or disagrees to the proposition of passing the bill notwithstanding the objections of the President?

The PRESIDENT pro tempore. As the Chair understands the motion, it is simply to proceed to the consideration of the bill.

Mr. LODGE. The motion that I made is in the language of the Constitution, that the House in which the bill originated shall proceed to reconsider the bill which the President returns without his approval. The motion the Senator from Missouri suggests will apply when the vote is taken on the question of passing the bill over the veto or sustaining the veto.

Mr. STONE. In other words, if the motion to reconsider should be agreed to, what then would be the status of the matter?

Mr. LODGE. That would bring before the Senate the question as to whether we should support the veto or overrule it.

Mr. STONE. Suppose the motion to reconsider should be disagreed to?

Mr. LODGE. That would end it, naturally.

Mr. STONE. In that event would the bill be passed, notwithstanding the objections of the President?

Mr. LODGE. No; this simply brings the matter before the Senate. If my motion is disagreed to, that shows that the Senate declines to reconsider it, and is equivalent to sustaining the veto.

The PRESIDENT pro tempore. The Chair will suggest that, in the opinion of the Chair, the motion should be to take the bill and message from the table for consideration, and that then the constitutional question should be propounded.

Mr. LODGE. Certainly.

Mr. BACON. Mr. President, I may be in error, but I think the language of the Constitution, when it says that the House in which the bill originated shall proceed to reconsider it, means that it shall proceed to consider it again, and not that there shall be a reconsideration for the purpose of reversal.

Mr. LODGE. Undoubtedly.

Mr. BACON. And the proper question is whether or not the bill shall pass, the veto notwithstanding.

Mr. LODGE. The bill and the veto message are not before the Senate. The motion is to proceed to the consideration of the bill.

The PRESIDENT pro tempore. The yeas and nays have been ordered on the motion of the Senator from Massachusetts to take the bill and message from the table. The Secretary will call the roll.

The question having been taken by yeas and nays, resulted—yeas 75, nays 9, as follows:

YEAS—75.

Ashhurst	Cummins	La Follette	Root
Bacon	Curtis	Lea	Sheppard
Bankhead	Dillingham	Lippitt	Simmons
Borah	Dixon	Lodge	Smith, Ariz.
Bourne	du Pont	McCumber	Smith, Ga.
Bradley	Fall	McLean	Smith, S. C.
Brady	Fletcher	Martin, Va.	Smoot
Brandegee	Foster	Myers	Sutherland
Bristow	Gallinger	Nelson	Swanson
Brown	Gamble	Oliver	Thomas
Burnham	Gardner	Overman	Thornton
Burton	Gore	Owen	Tillman
Catron	Guggenheim	Page	Townsend
Chamberlain	Jackson	Penrose	Warren
Clark, Wyo.	Johnson, Me.	Percy	Webb
Clarke, Ark.	Johnston, Ala.	Perkins	Wetmore
Crane	Jones	Poindexter	Williams
Crawford	Kenyon	Pomerene	Works
Culberson	Kern	Richardson	

NAYS—9.

Clapp	O'Gorman	Shively	Stephenson
Gronna	Paynter	Smith, Mich.	Stone
Martine, N. J.			

NOT VOTING—11.

Briggs	Cullom	Massey	Smith, Md.
Bryan	Hitchcock	Newlands	Watson
Chilton	Kavanaugh	Reed	

So Mr. LODGE's motion was agreed to.

The PRESIDENT pro tempore. The bill is before the Senate. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. LODGE. Mr. President, I do not desire to delay for a moment the vote on this bill. The bill was fully discussed in every stage, and came back twice from conference. The President has rested his objections on the single point of the literacy test, and has referred us to the accompanying letter of the Secretary of Commerce and Labor for his reasons. There are no reasons offered in that letter which have not been considered constantly during the last 20 years the question has been before Congress, and it seems to me there is no reason why we should not immediately dispose of the question stated by the Chair. I do not myself wish to discuss the matter at all. I hope the Senate is ready to vote.

Mr. MARTINE of New Jersey. Mr. President, apropos of the remarks of the Senator from Massachusetts [Mr. LODGE], I desire to send to the desk a telegram which I have received with reference to this subject, and I ask that it be read.

The PRESIDENT pro tempore. Without objection, the telegram will be read.

The Secretary read as follows:

NEW YORK, *February 16, 1913.*

Hon. JAMES E. MARTINE,
United States Senate, Washington, D. C.:

The Hebrew Sheltering and Immigrant Aid Society, composed of American citizens in all parts of the country, respectfully pray that you exercise your functions as a representative of the people in Congress and refuse to pass the immigration bill, S. 3175, over the veto of His Excellency William Taft, President of the United States. This bill contains uncalled-for drastic provisions which are bound to exclude from our shores decent law-abiding men and women for no good reason. No matter what the motives of the authors, this bill is based upon false notions. We are convinced as an organization that has worked among immigrants for a quarter century and is coming in daily contact with every strata of immigration that our immigrants in this country have made good. In their loyalty to the United States they rank next to none. In their patriotism and devotion to the principles of liberty they occupy the same place as any patriotic native American. They appreciate our glorious institutions more than a great many Americans who can trace their ancestry back for several generations. They have not given cause for the Congress of the United States to legislate for the exclusion from our shores of their kind. We are satisfied that the calm judgment of the American people is not in favor of the further restriction of immigration. Our laws provide sufficiently against the incoming of the mentally and physically unsound, and these laws are rigidly enforced by the United States Government. Our country is large enough, and there are enormous stretches of land lying bare and awaiting the human hand and brain to develop them. We pray that you do not permit the spirit of "narrow nativism" to override the just veto of the Chief Executive of this Nation.

Respectfully,

LEON SANDERS, *President.*
JACOB MASSEL, *Secretary.*

Mr. MARTINE of New Jersey. Mr. President, when this measure was before this body last year I expressed myself in most positive terms and with all the earnestness of my nature as being unequivocally opposed to it, and I am now gratified to see that the President of the United States has seen fit to send his veto to this body. As a self-respecting citizen and as an American I could not vote at this crisis to override the President's veto of this measure. As a principle I am opposed to it.

I insist that the literacy test has accomplished nothing of good and that it can accomplish nothing of good in the matter

of immigration to this country. It will be subversive of the whole policy and system of immigration in this land.

The best that has been accomplished in this great land for its development has come from men from the other side who were not asked the question: "Can you read or can you write?" And when the Nation's life was in crisis and struggle, and you asked him to shoulder his musket and fix his bayonet for a charge you never questioned as to whether he could read or write, but you garnered him in and bade him go on and defend your Constitution and your flag.

I say, Mr. President, that during the whole history of this country of the men who have carved out their fortunes and have made our country great, a great many, and those of their progeny who came after them, were utterly unable to write. I know within my own knowledge of men who can neither read nor write who have accumulated wealth in this land, and have made most respected and honored citizens.

I believe the passage of this measure can result in no good. It has accomplished nothing where it has been tried, and it can accomplish nothing to-day.

The argument, I know, will be advanced, "Oh, we have a different class to-day from what we had 40 or 50 years ago." Yes; different somewhat, but in the main it is the same. Earnest, honest men, endowed with God's good health, have come here to seek a refuge and to carve out for themselves a fortune and to aid us in developing this great country.

It is said that the Italians are dangerous people in this land. I insist there are good Italians, and as a race they are an industrious race. I defy the gentlemen advocating this measure to find an Italian beggar in the streets of your city or any other city. An Italian beggar is unknown. They are industrious and frugal to a degree that is unparalleled.

If literacy must be the gauge, I insist, Mr. President, that the most dangerous alien who can come to the shores of this fair land is the intellectual and intelligent villain, the intellectual and conniving scoundrel. I have no fear of the man who may not be able to read or write or translate in comparison with the man who is able in letters and at translation, if you choose, and in reading or writing. In comparison, I think, they have been plotting villains and have brought disaster not only to our own country but almost every other land to which they may have had access.

Mr. President, I recall very well having drunk in a good deal of inspiration from the words of a distinguished Senator in this body when, on April 7, 1908, he declared in these words:

> Within the last 20 years, however, there has been a great change—

In referring to immigration—

> Within the last 20 years, however, there has been a great change in the proportion of the various nationalities emigrating from Europe to the United States. The immigrants from Great Britain and Ireland and from Germany and Scandinavia have come down in numbers as compared with immigrants from countries which, until very recent years, sent no immigrants to America. We have never received, and do not now receive, any immigration from Spain or any considerable immigration from France and Belgium. The great growth in recent years in our immigration has been from Italy, from Poland, Hungary, and Russia, from eastern Europe, from subjects of the Sultan, and is now extending to the inhabitants of Asia Minor. With the exception of the Italians—

And it is these who are discriminated against largely—

> With the exception of the Italians, these people have never been amalgamated with or brought in contact with the English-speaking people or with those of France, Germany, Holland, and Scandinavia, who have built up the United States. I except the Italians not merely because their noble literature and splendid art are a part of our common inheritance but because they are conspicuously one of the countries which belong to what is known as western civilization. They, like ourselves, are the heirs of the civilization of ancient Rome, and until one has traveled in eastern Europe and studied the people one does not realize how much this signifies.

These words and more are the words of the distinguished Senator from Massachusetts [Mr. LODGE] when he saw fit and proper to laud the immigration of Italians to this fair land of ours.

I insist, Mr. President, in my own Commonwealth, in the southern part of the State of New Jersey, and in many other States, where there are millions of idle acres demanding the work of toilers, of industrious, honest men, there is a rich opportunity, and we can invite them here. I ask as the only restriction healthy bodies, clean minds, and moral purposes, and then, with these broad acres and a splendid Constitution, we can assimilate and digest the whole world better to our advantage, better to the world's Christianization and to the civilization of humanity.

I shall vote with all the earnestness of my nature to sustain the President's veto of this bill.

Mr. SMITH of Michigan. Mr. President, I desire to send to the desk a telegram received from many representative Polish citizens, or citizens of Polish origin, protesting against overriding the President's veto. I should like to have the telegram read and the names appended thereto, representing many thousands of the most respected citizens of Grand Rapids, Mich., printed in the RECORD without reading.

The PRESIDENT pro tempore. Without objection, the telegram will be read.

The telegram was read, and the names appended thereto were ordered to be printed in the RECORD, as follows:

GRAND RAPIDS, MICH., *February 16, 1913.*

Hon. WM. ALDEN SMITH,
Senate, Washington, D. C.:

Justice demands that you vote to uphold President Taft's veto of the Dillingham-Burnett immigration bill. The bill is so unjust that we are forced to request you to stand by our President, who considers that good clean men and women may come into our great country without having to stand a literacy test. We all know that in some countries the people are so unfortunate as to not have the opportunity to get an education; we have had a great many come here that could not read nor write and they have made some of our best citizens and their children very learned good men and women. We the undersigned most earnestly request your assistance, and have signed on behalf of our respective societies and as individuals.

Committee in charge from Polish National Benevolent Society; Polish American Industrial Society; Polish Progressive Benevolent Society and Knights of John Sobieske and Society, Michael Buzalski, president, Y. Stanley Jacowski, secretary; Rev. L. P. Krakowski, pastor of the Polish Sacred Heart congregation; Rev. Joseph Pietrasik, pastor of St. Isidore's congregation; Rev. C. Skory, pastor of St. Adalberts Church; Polish National Benevolent Society (a corporation), Michael Buzalski, president; Polish American Industrial Society (a corporation), F. Centilli, president; Grand Rapids central committee, representing six local branches of the Polish National Alliance of the United States, Julian Malsizewski, president; Polish Progressive Benevolent Society, Valentine J. Banaszak, president; Red Hussars' Benevolent Society, Adam Walchewski, president; Sacred Heart Society of Sacred Heart Parish, Jan Radlicki, president; Pulaski Guard Benevolent Protective Association, Jan Jochim, president; Sacred Heart Society of St. Isadore Sacred Parish, Frank Michalski, president; St. Isadore's Benevolent Society, Anthony Sakowiski, president; St. Hedwig Benevolent Society, B. Z. Czubinski, president; Knights of St. Casimir, A. Panfil, president; St. Casimir Benevolent Society, Frank Andrysiak, president; St. Adalberts Sons Aid Society, Jan Kosowiski, president; St. Hyacinth Aid Society, Aug Michalski, president; St. Stanislaus Aid Society, Casimir Talalay, president.

Mr. O'GORMAN. Mr. President, I ask that the Secretary read the message of the President, together with the communication from the Department of Commerce and Labor, in relation to the pending bill.

The PRESIDENT pro tempore. Without objection, the Secretary will read as requested.

Mr. STONE. Mr. President, I would most respectfully invite the attention of Senators to the letter of Secretary Nagel. I am sure they have not read it.

The PRESIDENT pro tempore. The message and the letter from the Secretary of the Department of Commerce and Labor will be read as requested.

The Secretary read as follows:

To the Senate:

I return herewith, without my approval, S. 3175.

I do this with great reluctance. The bill contains many valuable amendments to the present immigration law which will insure greater certainty in excluding undesirable immigrants.

The bill received strong support in both Houses and was recommended by an able commission after an extended investigation and carefully drawn conclusions.

But I can not make up my mind to sign a bill which in its chief provision violates a principle that ought, in my opinion, to be upheld in dealing with our immigration. I refer to the literacy test. For the reasons stated in Secretary Nagel's letter to me, I can not approve that test. The Secretary's letter accompanies this.

WM. H. TAFT.

THE WHITE HOUSE, *February 14, 1913.*

DEPARTMENT OF COMMERCE AND LABOR,
Washington, February 12, 1913.

MY DEAR MR. PRESIDENT: On the 4th instant Mr. Hilles, by your direction, sent me Senate bill 3175, "An act to regulate the immigration of aliens to and the residence of aliens in the United States," with the request that I inform you at my earliest convenience if I know of any objection to its approval. I now return the bill with my comments.

In view of the number of hearings and the general discussion that have been had no more than a brief reference to many of the points will be necessary. The following are some of the objections that have been raised:

First. No exception has been made in behalf of Hawaii. You have been assured that it is proposed to meet this objection by joint resolution. Even if this plan should not be carried out, I do not regard the objection as sufficiently serious to affect the merits of the bill.

Second. The provision that persons shall be excluded who can not become eligible under existing law to become citizens of the United States by naturalization is obscure, because it leaves unsettled the question as to who are to be regarded as white persons. But this is merely a perpetuation of the uncertainty which is now to be found in the naturalization law.

Third. The provision that the Secretary may determine in advance, upon application, whether it is necessary to import skilled labor in any particular instance, that this decision shall be held in abeyance for 30 days, and that in the meantime anyone objecting may appeal to the dis-

triet court to try de novo such question of necessity is unsatisfactory. The provision for the appeal to the courts is probably unconstitutional, but even if the entire provision proves ineffective the law will be left substantially where it is, and so this does not constitute a grave objection to the bill.

Fourth. The provision that the Secretary may detail immigrant inspectors and matrons for duty on vessels carrying immigrants or immigrant passengers is objected to by foreign countries, but inasmuch as this is left to the discretion of the Secretary, and it is understood, for illustration, that Italy insists upon such practice with respect to all steamship companies taking immigrants from her shores, it does not seem to me that this is a controlling objection.

Fifth. The provision in section 7, with respect to the soliciting of immigration by steamship companies, vests the Secretary with somewhat drastic authority by way of imposing fines and denying the right of a steamship company to land alien immigrant passengers. Again, this is not mandatory, and therefore does not go to the heart of the bill.

It appears to me that all these and similar objections might well have been considered in committee and may become the subject of future consideration by Congress, but, fairly considered, they are of incidental importance only and furnish no sufficient reason for disapproving this bill.

With respect to the literacy test, I feel compelled to state a different conclusion. In my opinion, this is a provision of controlling importance, not only because of the immediate effect which it may have upon immigration and the embarrassment and cost it may impose upon the service, but because it involves a principle of far-reaching consequence with respect to which your attitude will be regarded with profound interest.

The provision as it now appears will require careful reading. In some measure the group system is adopted—that is, one qualified immigrant may bring in certain members of his family—but the effect seems to be that a qualified alien may bring in members of his family who may themselves be disqualified, whereas a disqualified member would exclude all dependent members of his family, no matter how well qualified they might otherwise be. In other words, a father who can read a dialect might bring in an entire family of absolutely illiterate people, barring his sons over 16 years of age, whereas a father who can not read a dialect would bring about the exclusion of his entire family, although every one of them can read and write.

Furthermore, the distinction in favor of the female members of the family as against the male members does not seem to me to rest upon sound reason. Sentimentally, of course it appeals, but industrially considered it does not appear to me that the distinction is sound. Furthermore, there is no provision for the admission of aliens who have been domiciled here, and who have simply gone abroad for a visit. The test would absolutely exclude them upon return.

In the administration of this law very considerable embarrassment will be experienced. This at least is the judgment of members of the immigration force, upon whose recommendations I rely. Delay will necessarily ensue at all ports, but on the borders of Canada and Mexico that delay will almost necessarily result in great friction and constant complaint. Furthermore, the force will have to be very considerably increased, and the appropriation will probably be in excess of present sums expended by as much as a million dollars. The force of interpreters will have to be largely increased and, practically speaking, the bureau will have to be in a position to have an interpreter for any kind of language or dialect of the world at any port at any time. Finally, the interpreters will necessarily be foreigners, and with respect to only a very few of the languages or dialects will it be possible for the officials in charge to exercise anything like supervision.

Apart from these considerations, I am of the opinion that this provision can not be defended upon its merits. It was originally urged as a selective test. For some time recommendations in its support upon that ground have been brought to our attention. The matter has been considered from that point of view, and I became completely satisfied that upon that ground the test could not be sustained. The older argument is now abandoned, and in the later conferences, at least, the ground is taken that the provision is to be defended as a practical measure to exclude a large proportion of undesirable immigrants from certain countries. The measure proposes to reach its result by indirection, and is defended purely upon the ground of practical policy, the final purpose being to reduce the quantity of cheap labor in this country. I can not accept this argument. No doubt the law would exclude a considerable percentage of immigration from southern Italy, among the Poles, the Mexicans, and the Greeks. This exclusion would embrace probably in large part undesirable but also a great many desirable people, and the embarrassment, expense, and distress to those who seek to enter would be out of all proportion to any good that can possibly be promised for this measure.

My observation leads me to the conclusion that, so far as the merits of the individual immigrant are concerned, the test is altogether overestimated. The people who come from the countries named are frequently illiterate because opportunities have been denied them. The oppression with which these people have to contend in modern times is not religious, but it consists of a denial of the opportunity to acquire reading and writing. Frequently the attempt to learn to read and write the language of the particular people is discouraged by the Government, and these immigrants in coming to our shores are really striving to free themselves from the conditions under which they have been compelled to live.

So far as the industrial conditions are concerned, I think the question has been superficially considered. We need labor in this country, and the natives are unwilling to do the work which the aliens come over to do. It is perfectly true that in a few cities and localities there are congested conditions. It is equally true that in very much larger areas we are practically without help. In my judgment, no sufficiently earnest and intelligent effort has been made to bring our wants and our supply together, and so far the same forces that give the chief support to this provision of the new bill have stubbornly resisted any effort looking to an intelligent distribution of new immigration to meet the needs of our vast country. In my judgment no such drastic measure, based upon a ground which is untrue and urged for a reason which we are unwilling to assert, should be adopted until we have at least exhausted the possibilities of a rational distribution of these new forces.

Furthermore, there is a misapprehension as to the character of the people who come over here to remain. It is true that in certain localities newly arrived aliens live under deplorable conditions. Just as much may be said of certain localities that have been inhabited for a hundred years by natives of this country. These are not the general conditions, but they are the exceptions. It is true that a very considerable portion of immigrants do not come to remain, but return after they have acquired some means, or because they find themselves unable to cope with the conditions of a new and aggressive country. Those who return for the latter reason relieve us of their own volition of a burden. Those who return after they have acquired some means certainly must be admitted to have left with us a consideration for the advantage which they have enjoyed. A careful examination of the character of the people who come to stay and of the employment in which a large part of the new immigration is engaged will, in my judgment, dispel the apprehension which many of our people entertain. The census will disclose that with rapid strides the foreign-born citizen is acquiring the farm lands of this country. Even if the foreign-born alone is considered, the percentage of his ownership is assuming a proportion that ought to attract the attention of the native citizens. If the second generation is included it is safe to say that in the Middle West and West a majority of the farms are to-day owned by foreign-born people or they are descendants of the first generation. This does not embrace only the Germans and the Scandinavians, but is true in large measure, for illustration, of the Bohemians and the Poles. It is true in surprising measure of the Italians; not only of the northern Italians, but of the southern.

Again, an examination of the aliens who come to stay is of great significance. During the last fiscal year 838,172 aliens came to our shores, although the net immigration of the year was only a trifle above 400,000. But, while we received of skilled labor 127,016, and only 35,898 returned; we received servants 116,529, and only 13,449 returned; we received farm laborers 184,154, and only 3,978 returned, it appears that laborers came in the number of 135,726, while 209,279 returned. These figures ought to demonstrate that we get substantially what we most need, and what we can not ourselves supply, and that we get rid of what we least need and what seems to furnish, in the minds of many, the chief justification for the bill now under discussion.

The census returns show conclusively that the importance of illiteracy among aliens is overestimated, and that these people are prompt after their arrival to avail of the opportunities which this country affords. While, according to the reports of the Bureau of Immigration, about 25 per cent of the incoming aliens are illiterate, the census shows that among the foreign-born people of such States as New York and Massachusetts, where most of the congestion complained of has taken place, the proportion of illiteracy represents only about 13 per cent.

I am persuaded that this provision of the bill is in principle of very great consequence, and that it is based upon a fallacy in undertaking to apply a test which is not calculated to reach the truth and to find relief from a danger which really does not exist. This provision of the bill is new, and it is radical. It goes to the heart of the measure. It does not permit of compromise, and, much as I regret it, because the other provisions of the measure are in most respects excellent and in no respect really objectionable, I am forced to advise that you do not approve this bill.

Very sincerely, yours, CHARLES NAGEL, *Secretary*.

The PRESIDENT.

During the reading of Secretary's Nagel's letter,

Mr. O'GORMAN. I should like to have the reading of the letter suspended now, and move that the Senate adjourn until 12 o'clock to-morrow.

The motion was not agreed to.

After the reading of Secretary Nagel's letter,

Mr. DU PONT. Mr. President, I do not like to detain the Senate at this late hour, and I shall do so only for a moment. I desire to say that I disapprove of the illiteracy clause in the pending bill, and shall therefore vote to sustain the President's veto.

Some years ago I had occasion to examine the muster rolls of the continental line of the Revolutionary Army, and I discovered that in many companies as high as 75 or 80 per cent of the soldiers were illiterates and foreigners. If those men—those illiterates, those foreigners—were then good enough to risk their lives in assisting to obtain our independence, it seems to me that the same class of men are now good enough to assist in the development of this great country by their labor on the farms, in the mines, and in every other department where labor is so much needed.

The PRESIDENT pro tempore. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. STONE. Mr. President——

Mr. LODGE. The yeas and nays, of course, are necessary under the Constitution.

The PRESIDENT pro tempore. The Constitution requires that the vote in such a case shall be taken by yeas and nays.

Mr. STONE. I will ask the Senator from Massachusetts [Mr. LODGE] to adjourn the further consideration of this bill until to-morrow at some hour when we may agree to vote. There are some Senators who would like to make observations in opposition to the bill. I do not know whether there are any who wish to speak in favor of it. For myself, I desire to say a few words in support of the President's veto, but I would rather the matter should go over until some hour to-morrow.

Mr. LODGE. Mr. President, if we can agree to vote to-morrow I shall be very glad to comply with the suggestion of the Senator from Missouri. The bill and the message of the President are now the unfinished business of the Senate, and, therefore, would come up to-morrow at 2 o'clock. Therefore I ask unanimous consent that, not later than 5 o'clock to-morrow, a vote be taken on the question of sustaining the veto.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Massachusetts?

Mr. CLAPP. Mr. President, I shall object to any unanimous-consent agreement. Let us proceed with this matter and dispose of it.

The PRESIDENT pro tempore. Objection is made.

Mr. LODGE. I have nothing further to do, then, of course, but to keep the matter before the Senate, though I do not like to interfere with other business. I wish to say to the Senator from Minnesota that the suggestion did not come from me, but it came from the opponents of the bill.

Mr. CLAPP. I did not mean that in any such sense.

The PRESIDENT pro tempore. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. CLARKE of Arkansas. I believe there is one motion which can be made by which we can attend to the matter to-morrow, and I move that the Senate adjourn.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Arkansas. [Putting the question.] The noes appear to have it.

Mr. MARTINE of New Jersey. I call for the yeas and nays, Mr. President.

The yeas and nays were ordered; and, being taken, resulted—yeas 25, nays 58, as follows:

YEAS—25.

Brady	du Pont	Martine, N. J.	Stephenson
Brown	Fletcher	Myers	Stone
Catron	Gronna	O'Gorman	Townsend
Chamberlain	Kenyon	Paynter	Williams
Clarke, Ark.	Kern	Pomerene	
Culberson	Lippitt	Shively	
Cullom	Martin, Va.	Smith, Md.	

NAYS—58.

Ashurst	Curtis	McCumber	Smith, Ariz.
Bacon	Dillingham	McLean	Smith, Ga.
Bankhead	Dixon	Nelson	Smith, Mich.
Borah	Fall	Oliver	Smith, S. C.
Bourne	Gallinger	Overman	Smoot
Bradley	Gardner	Owen	Sutherland
Brandegee	Gore	Page	Swanson
Bristow	Guggenheim	Penrose	Thomas
Burnham	Jackson	Percy	Thornton
Burton	Johnson, Me.	Perkins	Tillman
Clapp	Johnston, Ala.	Poindexter	Webb
Clark, Wyo.	Jones	Richardson	Wetmore
Crane	La Follette	Root	Works
Crawford	Lea	Sheppard	
Cummins	Lodge	Simmons	

NOT VOTING—12.

Briggs	Foster	Kavanaugh	Reed
Bryan	Gamble	Massey	Warren
Chilton	Hitchcock	Newlands	Watson

So the Senate refused to adjourn.

Mr. STONE. Mr. President, I should like to have the bill read by the Secretary for the information of the Senate. I am a little apprehensive that some, if not most, of the Senators have not read the bill.

The PRESIDENT pro tempore. The Senator from Missouri requests that the bill shall be read. That order will be made, in the absence of objection.

Mr. LODGE. Mr. President, I do not know of any rule that compels the reading of the bill. It is perfectly familiar to Senators, I think, and I do not wish to have the time consumed uselessly. If Senators wish to speak, that is one thing, but I do not think we should have documents read, and I object.

The PRESIDENT pro tempore. Objection to the reading is made.

Mr. STONE. I can read the bill.

Mr. LODGE. I know the Senator can read it, but I do not want to put him to that trouble. I should like very much if we could make the agreement which I have proposed, which was, in fact, suggested by the Senator from Missouri. I do not think it is possible to take a vote at this late hour, if there are Senators who desire to speak, and so I will renew the request, if it be agreeable to the Senator from Missouri.

Mr. STONE. If the Senator will pardon me, there are two or three Senators who desire to address the Senate on the pending question, and after conference with the Senator from Massachusetts, in charge of the measure, it was agreed between them and him that we would adjourn until 12 o'clock to-morrow, and that the vote should be taken not later than 5 o'clock. I believe it can be taken much earlier than 5 o'clock. There is certainly no disposition, so far as I am advised—and I think I can speak with confidence—on the part of anyone merely to delay the consideration and final disposition of this question; but there is reason in all things; and I join with the Senator from Massachusetts in again asking the Senate to allow this matter to go over until to-morrow with an assurance that there is no disposition to obstruct the early disposition of it.

Mr. LODGE. Mr. President, I renew the request, and I hope the Senator from Minnesota will allow us to adopt that course. It is the quickest way of disposing of the matter. We shall gain nothing by sitting here this evening, in my opinion. I renew the request, which is, in brief, that we shall vote on the bill to-morrow, not later than 5 o'clock.

Mr. CLAPP. Will the Senator make it 3 o'clock?

Mr. LODGE. I am perfectly willing to make it 3 o'clock, if that is agreeable.

Mr. STONE. If we can begin a little earlier than 2——

Mr. LODGE. The bill can be taken up immediately after the routine morning business and voted on not later than 3 o'clock.

Mr. STONE. If we can begin at 1——

Mr. KERN. Make it 4.

Mr. NELSON. Mr. President, will the Senator from Massachusetts yield to me?

Mr. STONE. What is the need of a controversy here about half an hour?

Mr. LODGE. Exactly.

Mr. STONE. Several Senators desire to be heard, not extensively, but within reasonable limits. My friend from Minnesota is so generous and fair in all things that I am sure I need only to present the matter to him.

Mr. NELSON. Will the Senator from Missouri yield to me?

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from Minnesota?

Mr. STONE. I do.

Mr. NELSON. It is very important that we should dispose of the appropriation bills. Therefore I would suggest that unanimous consent be asked that we take up this bill to-morrow, immediately after the reading of the Journal, and dispose of it by a final vote before 3 o'clock, or not later than 3 o'clock.

Mr. LODGE. That is all right.

Mr. STONE. That is satisfactory to me.

Mr. OLIVER. Mr. President, there are quite a number of committee reports that have been delayed, and on that account there ought to be a short time allowed for routine morning business.

Mr. LODGE. That will come immediately after the vote. It will not cut off the routine morning business.

Mr. SMOOT. That will be all right.

Mr. LODGE. It will not cut it off if the vote is taken at 3 o'clock.

The PRESIDENT pro tempore. Will the Senator from Massachusetts restate his request?

Mr. LODGE. I ask that to-morrow, immediately after the reading of the Journal, the immigration bill, with the President's objections, be taken up, and that the vote upon it be taken not later than 3 o'clock.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Massachusetts?

Mr. CLAPP. I objected to the other suggestion not for purposes of delay, but because I thought we ought to go to work and dispose of this matter. I do not want to stand against the will of the Senate. We have an immense amount of work yet before us at the present session. If it is the sense of the Senate that we should pass upon this matter at 3 o'clock to-morrow, while I deprecate that policy, I shall not any further interpose an objection.

Mr. CLARK of Wyoming. Mr. President, I rise to a parliamentary inquiry. Will the taking up of this bill by unanimous consent cut off morning business to-morrow?

Mr. LODGE. No.

Mr. CLARK of Wyoming. I am asking the Chair.

The PRESIDENT pro tempore. It would preclude the presentation of morning business, except by unanimous consent, after the disposition of this measure.

Mr. CLARK of Wyoming. I supposed that was true; and in that event, unless the request for unanimous consent is so amended that we can take up the morning business, I shall have to object.

Mr. LODGE. I thought it would be open to morning business. I will add to the request, then, that after the disposition of this question the morning business shall be disposed of.

The PRESIDENT pro tempore. Is there objection to the modified request of the Senator from Massachusetts? The Chair hears none, and it is so ordered.

INCOME TAX.

The PRESIDENT pro tempore presented a joint resolution passed by the Legislature of Wyoming, which was referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

THE STATE OF WYOMING,
Office of the Secretary of State.

UNITED STATES OF AMERICA, *State of Wyoming:*

I, Frank L. Houx, secretary of state of the State of Wyoming, do hereby certify that the following copy of senate joint resolution No. 2,

adopted by the Legislature of the State of Wyoming, has been carefully compared with the original, filed in this office on the 6th day of February, A. D. 1913, and is a full, true, and correct copy thereof:

Senate joint resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes.

Whereas both Houses of the Sixty-first Congress of the United States of America at its first session by a constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

A joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed by an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely:

"ART. XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

Therefore be it

Resolved by the Senate of the State of Wyoming (the House of Representatives concurring). That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the Legislature of the State of Wyoming.

That certified copies of this preamble and joint resolution be forwarded by the secretary of state of this State to the President of the United States, Secretary of State of the United States, to the Presiding Officer of the United States Senate, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative of the United States, and to each Senator and Representative in Congress from the State of Wyoming.

By the president:

BIRNEY H. SAGE.

By the speaker:

MARTIN L. PRATT.

10.52 a. m., February 3, 1913.

JOSEPH M. CAREY, *Governor.*

In witness whereof I have hereunto set my hand and affixed the great seal of the State of Wyoming.

Done at Cheyenne, the capital, this 10th day of February, A. D. 1913.

[SEAL.] FRANK L. HOUX,
Secretary of State.

By F. H. WESCOTT,
Deputy.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial adopted by the Legislature of Idaho, which was referred to the Committee on Public Lands and ordered to be printed in the RECORD, as follows:

[Certificate of certified copy.]

STATE OF IDAHO,
DEPARTMENT OF STATE.

I, Wilfred L. Gifford, Secretary of State of the State of Idaho, do hereby certify that the annexed is a full, true, and complete transcript of House joint memorial No. 1; by Mason; passed the house January 23, 1913; passed the Senate January 31, 1913; which was filed in this office on the 5th day of February, A. D. 1913, and admitted to record.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State. Done at Boise City, the capital of Idaho, this 7th day of February, A. D. 1913, and of the independence of the United States of America the one hundred and thirty-seventh.

[SEAL.] WILFRED L. GIFFORD,
Secretary of State.

House joint memorial 1.

To the honorable the Senators and Representatives of the United States in Congress assembled:

Your memorialists, the Legislature of the State of Idaho, respectfully represent that—

Whereas a bill, known as the "three-year homestead bill," was passed by the Senate of the National Congress on February 5, 1912, said bill being without any requirements as to the cultivation of homesteads; and

Whereas the said bill was afterwards amended in the National House of Representatives so as to require cultivation, and was finally approved on June 6, 1912; and

Whereas said cultivation clause works a hardship upon settlers who have taken up or who will take up homesteads in the timbered sections of the State of Idaho and in other Western States in that those settlers who are dependent upon their own resources and labor to maintain their families and to improve their homesteads can not comply with the provisions of said law;

We therefore pray and earnestly urge that relief be granted to these homesteaders by appropriate amendment, so as to make the provisions of the said law applicable to the timbered sections of this and other Western States.

The Secretary of State of the State of Idaho is hereby instructed to forward copies of this memorial to the Senate and House of Representatives of the United States, and copies of the same to our Senators and Representatives in Congress.

This memorial passed the house of representatives on the 23d day of January, 1913.

C. S. FRENCH,
Speaker of the House of Representatives.

This memorial passed the Senate on the 31st day of January, 1913.

HERMAN H. TAYLOR,
President of the Senate.

I hereby certify that the within house joint memorial originated in the house of representative during the twelfth session of the Legislature of the State of Idaho.

[SEAL.] DAVID BURRELL,
Chief Clerk of the House of Representatives.

The PRESIDENT pro tempore presented a joint memorial of the Legislature of Idaho, which was ordered to lie on the table and to be printed in the RECORD, as follows:

[Certificate of certified copy.]

STATE OF IDAHO,
Department of State.

I, Wilfred L. Gifford, secretary of state of the State of Idaho, do hereby certify that the annexed is a full, true, and complete transcript of house joint memorial No. 2, by committee on privileges and elections, recommending the passage of the Kenyon-Sheppard bill—passed the house January 27, 1913; passed the senate February 3, 1913—which was filed in this office on the 5th day of February, A. D. 1913, and admitted to record.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State. Done at Boise City, the capital of Idaho, this 7th day of February, in the year of our Lord one thousand nine hundred and thirteen and of the independence of the United States of America the one hundred and thirty-seventh.

[SEAL.] WILFRED L. GIFFORD,
Secretary of State.

House joint memorial 2.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the Legislature of the State of Idaho, respectfully represent that—

Whereas a bill is now pending in Congress having for its purpose the guaranteeing to the respective States the fullest jurisdiction over all intoxicating liquors consigned to them from the time they enter the State, said bill being known as the Kenyon-Sheppard bill;

Whereas we believe that under the present laws the State is seriously handicapped in carrying out its policies relative to the liquor traffic, and that the passage of such act would be of great benefit to the several States: Now therefore

Your memorialists urgently recommend said bill be enacted into a law at the earliest possible time.

The secretary of state of the State of Idaho is hereby instructed to forward this memorial to the Senate and House of Representatives of the United States and copies of the same to our Senators and Representatives in Congress immediately upon the passage of the same.

This house joint memorial passed the house of representatives on the 27th day of January, 1913.

C. S. FRENCH,
Speaker of the House of Representatives.

This house joint memorial passed the senate on the 3d day of February, 1913.

HERMAN H. TAYLOR,
President of the Senate.

I hereby certify that the within house joint memorial originated in the house of representatives during the twelfth session of the Legislature of the State of Idaho.

[SEAL.] DAVID BURRELL,
Chief Clerk of the House of Representatives.

The PRESIDENT pro tempore presented a joint resolution passed by the Legislature of Ohio, which was referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

House joint resolution 11.

Joint resolution relative to funds in the Federal Treasury and to provide for the distribution and use of the income therefrom.

Whereas there was on deposit in the Federal Treasury at the close of business January 21, 1913, to the credit of the general revenue fund the sum of $136,120,738; and

Whereas the sum of $136,120,738 represents the normal credit balance of such fund; and

Whereas the amount of such credit balance is not at this time nor prior hereto has ever been in active circulation; and

Whereas the amount of such fund should be loaned to the banking institutions of the various States on the basis of competitive bidding; and

Whereas the general business, manufacturing, commercial, and agricultural interests of Ohio, as well as of every other State, would be greatly benefited through the investment, use, and privilege of such Federal credit balance; and

Whereas the amount of revenue that should be obtained from the use of such Federal Treasury balance should be credited to the respective States in which such funds are employed; and

Whereas the total amount of interest paid by the banks of the respective States to the Federal Government should be credited to the respective States employing such fund; and

Whereas the amount so credited to such respective States should be used in constructing and maintaining highways: Therefore be it

Resolved by the General Assembly of the State of Ohio, That the Congress of the United States be, and is hereby petitioned to enact statutes providing for the deposit of funds in the Federal Treasury in any of the banks of the United States upon competitive bidding as to interest, and upon approved security. And that the income from such deposits be credited to the treasurer of the State in the respective States in which such funds were on deposit; and be it

Resolved, That the income from such deposits as are credited to the treasurer of such States having employed such funds be credited to the highway construction and improvement funds to be used as are other funds for such construction and improvement purposes; and be it further

Resolved, That the secretary of state be, and is hereby, directed to forward duly authenticated copies of this resolution to the President of the United States Senate and to the Speaker of the House of Representatives of the United States, with the request that the same be laid before the Senate and House for prompt consideration.

C. L. SWAIN,
Speaker of the House of Representatives.

HUGH L. NICHOLS,
President of the Senate.

Adopted January 20, 1913.

UNITED STATES OF AMERICA,
STATE OF OHIO,
Office of the Secretary of State.

I, Chas. H. Graves, secretary of state of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by

me with the original rolls now on file in this office and in my official custody as secretary of state and found to be true and correct, of a joint resolution adopted by the General Assembly of the State of Ohio on the 29th day of January, A. D. 1913, entitled "Joint resolution relative to funds in the Federal Treasury, and to provide for the distribution and use of the income therefrom."

In testimony whereof I have hereunto subscribed my name and caused the great seal of the State of Ohio to be affixed at Columbus, Ohio, this 13th day of February, A. D. 1913.

[SEAL.] CHAS. H. GRAVES,
Secretary of State.

The PRESIDENT pro tempore presented a telegram, in the nature of a petition, from Local Union No 242, United Mine Workers' Association of Iowa, praying that an investigation be made by Congress of the conditions in the strike zone of the West Virginia coal fields, which was referred to the Committee on Education and Labor.

He also presented the petition of John Buzzuffi, of New York, N. Y., and telegrams in the nature of petitions from the Polish National Alliance and the Polish Alma Mater of America, praying Congress to sustain the President's veto of the immigration bill, which were ordered to lie on the table.

Mr. TILLMAN. I present a concurrent resolution adopted by the Legislature of South Carolina, which I ask may be printed in the RECORD and be referred to the Committee on Military Affairs.

There being no objection, the concurrent resolution was referred to the Committee on Military Affairs and ordered to be printed in the RECORD, as follows:

A concurrent resolution.

Be it resolved by the house of representatives (the senate concurring), That the United States Senators and Representatives in Congress for South Carolina be, and they are hereby, requested to approve and use their influence in securing the passage of the Pepper militia pay bill, now pending in Congress, if consistent with their views as to the desirability of the legislation.

That the clerk of the house is instructed to forward a copy of this resolution to the Senators and Representatives in Congress from this State.

The house agrees to the resolution and orders that it be sent to the senate for concurrence.

By order of the house:

JAMES A. HOYT,
Clerk of the House.

The Senate agrees to the resolution and orders that it be returned to the house with concurrence.

By order of the senate:

W. M. MANN,
Clerk of the Senate.

Mr. GRONNA. I present several telegrams, in the nature of petitions, praying that the Congress sustain the veto of the President of the immigration bill. I ask that the telegrams lie on the table and be printed in the RECORD.

There being no objection, the telegrams were ordered to lie on the table and to be printed in the RECORD, as follows:

NEW YORK, *February 16, 1913.*

Hon. ASLE J. GRONNA,
United States Senate, Washington, D. C.:

The Hebrew Sheltering and Immigrant Aid Society, composed of American citizens in all parts of the country, respectfully prays that you exercise your functions as a representative of the people in Congress and refuse to pass the immigration bill (S. 3175) over the veto of His Excellency William H. Taft, President of the United States. This bill contains uncalled-for drastic provisions, which are bound to exclude from our shores decent law-abiding men and women for no good reason. No matter what the motives of the authors, this bill is based upon false notions. We are convinced as an organization, that has worked among immigrants for a quarter century and is coming in daily contact with every strata of immigration, that our immigrants in this country have made good. In their loyalty to the United States they rank next to none. In their patriotism and devotion to the principles of liberty they occupy the same place as any patriotic native American. They appreciate our glorious institutions more than a great many Americans who can trace their ancestry back for several generations. They have not given cause for the Congress of the United States to legislate for the exclusion from our shores of their kind. We are satisfied that the calm judgment of the American people is not in favor of the further restriction of immigration. Our laws provide sufficiently against the incoming of the mentally and physically unsound, and these laws are rigidly enforced by the United States Government. Our country is large enough and there are enormous stretches of land lying bare that are awaiting the human hand and brain to develop them. We pray that you do not permit the spirit of "narrow nativism" to override the just veto of the Chief Executive of this Nation.

Respectfully,

LEON SANDERS, *President.*
JACOB MASSEL, *Secretary.*

CHICAGO, ILL., *February 17, 1913.*

Hon. A. J. GRONNA,
Washington, D. C.:

Hope the veto of the immigration bill will be sustained.

A. V. EILERT,
Secretary and Treasurer Skandinaven.

NEW YORK, *February 14, 1913.*

Senator ASLE J. GRONNA,
United States Senate, Washington, D. C.:

I trust that you will do all that lies in your power to sustain the President's veto of the immigration bill.

LOUIS MARSHALL,
President American Jewish Committee.

Mr. GRONNA presented a memorial of the General Federation of Women's Clubs of North Dakota, remonstrating against the transfer of the control of the national forests of the United States to the several States, which was referred to the Committee on Forest Reservations and the Protection of Game.

He also presented a memorial of the congregation of the Seventh-day Adventist Church of Kulm, N. Dak., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was ordered to lie on the table.

He also presented a memorial of the congregation of the Seventh-day Adventist Church of Kenmare, N. Dak., and a memorial of the congregation of the Seventh-day Adventist Church of Max, N. Dak., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

He also presented a petition of G. A. Fraser, Fargo, N. Dak., praying for the passage of the so-called Owen health bill, which was ordered to lie on the table.

Mr. FLETCHER presented a memorial of the Board of Trade of Tampa, Fla., and a memorial of sundry citizens of Miami, Fla., remonstrating against the enactment of legislation providing for the Federal regulation of pilots and pilotage, which were referred to the Committee on Commerce.

Mr. CULLOM presented a memorial of members of the Woman's Club of Chicago, Ill., remonstrating against the enactment of legislation transferring the control of the national forests to the several States, which was referred to the Committee on Forest Reservations and the Protection of Game.

He also presented a petition of sundry citizens of Illinois, praying for the enactment of legislation to increase the compensation paid to railroads for carrying the mails, which was referred to the Committee on Post Offices and Post Roads.

He also presented resolutions adopted by the Trades and Labor Council of Danville, Ill., favoring the strict enforcement of legislation providing for the inspection of locomotive boilers and safety appliances for railway equipment, etc., which were referred to the Committee on Interstate Commerce.

Mr. SMITH of South Carolina presented a concurrent resolution passed by the general assembly of the State of South Carolina, favoring the passage of the so-called Pepper militia pay bill, which was referred to the Committee on Military Affairs.

Mr. ASHURST presented resolutions adopted by the Phoenix and Maricopa County Board of Trade, of Phoenix, Ariz., recommending that the present area of Indian reservations in the Salt River Valley and in the vicinity of the Salt River Valley be not extended, and favoring the adoption of a plan for the reduction rather than the extension of the Indian reservations, which were referred to the Committee on Public Lands.

Mr. ROOT presented a memorial of the congregation of the Seventh-day Adventist Church of the Bronx, New York, and memorials of sundry citizens of Rome and Oneida, N. Y., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

REPORTS OF COMMITTEES.

Mr. DU PONT, from the Committee on Pensions, to which was referred the bill (S. 8438) granting an increase of pension to Annie G. Hawkins, reported it without amendment and submitted a report (No. 1211) thereon.

Mr. BOURNE. From the Committee on Post Offices and Post Roads I report back favorably with amendments the bill (H. R. 27148) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, and for other purposes, and I submit a report (No. 1212) thereon.

The PRESIDENT pro tempore. The bill will be placed on the calendar.

Mr. GAMBLE. From the Committee on Indian Affairs I submit a report (No. 1213) to accompany the bill (H. R. 26874) making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1914, which I ask may be printed.

The PRESIDENT pro tempore. The report will be received and printed.

Mr. CRAWFORD, from the Committee on Claims, to which was referred the bill (S. 8404) for the relief of Jeanie G. Lyles, reported it without amendment and submitted a report (No. 1214) thereon.

Mr. OLIVER, from the Committee on Manufactures, to which was referred the bill (H. R. 22526) to amend section 8 of an act entitled "An act for preventing the manufacture, sale, or

transportation of adulterated, or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, reported it with amendments and submitted a report (No. 1216) thereon.

Mr. DILLINGHAM, from the Committee on the District of Columbia, to which was referred the bill (S. 4681) to authorize and require an extension of the street railway lines of the Washington Railway & Electric Co., to authorize a change in the permanent system of highway plans, to provide for the condemnation of certain streets, and for other purposes, reported it with amendments and submitted a report (No. 1215) thereon.

PAY OF OFFICERS OF THE NAVY.

Mr. SMITH of Maryland. From the Committee on Naval Affairs I report back favorably without amendment the bill (S. 7278) providing that the pay of officers of the Navy commence from the date they take rank as stated in their commissions, and I submit a report (No. 1217) thereon. I ask unanimous consent for the present consideration of the bill.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It provides that all officers of the Navy who, since the 3d day of March 1899, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

JOHN K. WREN.

Mr. BRISTOW. From the Committee on Military Affairs I report favorably without amendment the bill (H. R. 22939) for the relief of John K. Wren, and I submit a report (No. 1220) thereon. I ask unanimous consent for the present consideration of the bill.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes that in the administration of the pension laws John K. Wren, who served in Company D, Sixty-sixth Regiment Ohio Volunteer Infantry, shall be held and considered to have been honorably discharged from said company and regiment on the 16th day of December, 1863. But no rights or benefits under any law shall accrue to John K. Wren prior to the passage of this act.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

WILLIAM KAISER.

Mr. BRISTOW. From the Committee on Claims I report favorably without amendment the bill (H. R. 16127) for the relief of William Kaiser, and I submit a report (No. 1218) thereon. I ask unanimous consent for the present consideration of the bill.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It authorizes the Secretary of the Treasury to pay to William Kaiser $565.04, the amount lost by him while postmaster at Faribault, Minn., throught the failure of the First National Bank of that city.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

CHRISTIAN HEDGES.

Mr. KENYON. On behalf of the senior Senator from Montana [Mr. DIXON] I report back favorably from the Committee on Military Affairs the bill (H. R. 19191) for the relief of Christian Hedges, and I submit a report (No. 1219) thereon. I ask unanimous consent for the present consideration of the bill.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary read the bill; and there being no objection, the Senate, as in Committe of the Whole, proceded to its consideration. It provides that in the administration of the pension laws Christian Hedges, late captain Company G, Seventh Regiment Iowa Volunteer Infantry, shall hereafter be held and considered to have been honorably discharged from military service of the United States as a member of said regiment on the 6th day of July, 1864. But no pension shall accrue prior to the passage of this act.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

DEPARTMENT OF LABOR.

Mr. BORAH. Mr. President, I give notice that to-morrow, immediately following the disposition of the unanimous-consent agreement as to the veto message on the immigration bill, I shall move to take up and consider Calendar No. 856, being the bill (H. R. 22913) to create a department of labor.

Mr. SMOOT. I ask the Senator from Idaho if he intends his notice to interfere with the consideration of the District appropriation bill.

Mr. BORAH. I do not care to modify my notice. We can dispose of that question when the time comes.

Mr. SMOOT. I merely desire to call attention to it, Mr. President.

BILLS AND JOINT RESOLUTION INTRODUCED.

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. PAYNTER:

A bill (S. 8477) to authorize and direct the Commissioners of the District of Columbia to cause to be removed all obstructions from West Virginia Avenue, in the city of Washington, in the District of Columbia; to the Committee on the District of Columbia.

By Mr. CLAPP:

(By request:) A bill (S. 8478) to provide for the sale and conveyance of the inherited Indian lands; to the Committee on Indian Affairs.

A bill (S. 8479) granting a pension to William A. Gray; to the Committee on Pensions.

By Mr. STONE:

A bill (S. 8480) to construe the name of E. T. Bourger, as the same appears in the report of Hawkins-Taylor Commission in relation to Company F, Osage County Battalion, Missouri Home Guards, to refer to Joseph Bourgeret, of Osage County, Mo.; to the Committee on Military Affairs.

A bill (S. 8481) granting a pension to Louisa Squires; to the Committee on Pensions.

By Mr. O'GORMAN:

A bill (S. 8482) for the relief of James P. Ruggles, and others; to the Committee on Claims.

By Mr. TOWNSEND:

A bill (S. 8483) granting an increase of pension to Thomas W. Michael (with accompanying paper); to the Committee on Pensions.

By Mr. SMITH of Maryland:

A bill (S. 8484) to amend the charter of the East Washington Heights Traction Railroad Co.; to the Committee on the District of Columbia.

By Mr. BORAH:

A bill (S. 8485) granting an increase of pension to Marsena De Witt McKane (with accompanying papers); and

A bill (S. 8486) granting a pension to Sarah R. Vancourt (with accompanying papers); to the Committee on Pensions.

By Mr. WEBB:

A bill (S. 8487) to prevent the desecration of the flag of the United States and to provide punishment therefor; to the Committee on the Judiciary.

By Mr. CHILTON:

A bill (S. 8488) for the relief of Anthony Lawson; to the Committee on Claims.

A bill (S. 8489) granting a pension to George W. Cook;

A bill (S. 8490) granting a pension to A. T. Landress (with accompanying paper); and

A bill (S. 8491) granting an increase of pension to Samuel W. Ake (with accompanying paper); to the Committee on Pensions.

By Mr. SMITH of Michigan:

A bill (S. 8492) granting an increase of pension to David S. Fairchild; to the Committee on Pensions.

By Mr. McCUMBER:

A bill (S. 8493) granting an increase of pension to Emsey O. Young; to the Committee on Pensions.

A bill (S. 8494) for the relief of Charles Ashwell and others (with accompanying paper); to the Committee on Claims.

By Mr. LA FOLLETTE:

A bill (S. 8495) granting an increase of pension to Elisha L. Ashley; to the Committee on Pensions.

By Mr. BRYAN:

A bill (S. 8496) to amend section 8 of an act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes"; and

A bill (S. 8497) to repeal section 3 of an act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1900"; to the Committee on Post Offices and Post Roads.

By Mr. SMITH of Maryland:

A bill (S. 8498) for the relief of John E. Semmes, receiver of the Columbian Iron Works & Dry Dock Co., of Baltimore, Md.; to the Committee on Claims.

By Mr. BRISTOW:

A bill (S. 8499) granting an increase of pension to George W. Miller (with accompanying papers); to the Committee on Pensions.

By Mr. PENROSE:

A bill (S. 8500) establishing compensation of certain customs officials; to the Committee on Finance.

A bill (S. 8501) granting an honorable discharge to George W. Biggs; to the Committee on Military Affairs.

A bill (S. 8502) granting an increase of pension to Harrison D. Boyer (with accompanying papers);

A bill (S. 8503) granting an increase of pension to Peter Banks (with accompanying papers);

A bill (S. 8504) granting an increase of pension to Margaret A. Pepper (with accompanying papers); and

A bill (S. 8505) granting an increase of pension to William H. Jackson (with accompanying papers); to the Committee on Pensions.

By Mr. NEWLANDS:

A joint resolution (S. J. Res. 161) granting permission to the Woman's Titanic Memorial Association to erect a memorial structure in Potomac Park, in the city of Washington; to the Committee on the Library.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. SMITH of Maryland submitted an amendment proposing to appropriate $80,000 for the construction of a post-office building at Cambridge, Md., intended to be proposed by him to the omnibus public buildings bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. BRISTOW submitted an amendment proposing to appropriate $1,575.55 for a pavement in front of the post office and courthouse at Salina, Kans., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. ROOT submitted an amendment proposing to appropriate $350,000 to acquire, by purchase, condemnation, or otherwise, part of the block on which the post office in the Borough of Brooklyn, city of New York, N. Y., is located, etc., intended to be proposed by him to the omnibus public buildings bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

He also submitted an amendment proposing to appropriate $75,000 for the purchase of a site and the erection thereon of a suitable building for the use and accommodation of the city of Waverly, N. Y., intended to be proposed by him to the omnibus public buildings bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

He also submitted an amendment relative to a reissuance of Treasury drafts, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. PENROSE submitted an amendment proposing to appropriate $15,000 to increase the limit of cost for the public building at York, Pa., intended to be proposed by him to the omnibus public-buildings bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

He also (by request) submitted an amendment relative to the retirement of officers of the Navy now on the retired list who prior to June 30, 1911, became incapacitated for active service by reason of physical disability incurred in line of duty, etc., intended to be proposed by him to the naval appropriation bill, which was referred to the Committee on Naval Affairs and ordered to be printed.

Mr. GUGGENHEIM submitted an amendment proposing to appropriate $225 to pay James F. Belford for services rendered as secretary to the Commission to Investigate the Pneumatic-Tube Postal System, intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

WITHDRAWAL OF PAPERS—HARRY M. OSBORNE.

On motion of Mr. GUGGENHEIM, it was

Ordered, That the papers accompanying the bill S. 737, Sixty-second Congress, first session, granting a pension to Harry M. Osborne, be withdrawn from the files of the Senate, no adverse report having been made thereon.

THE INITIATIVE AND REFERENDUM.

Mr. OWEN. I offer a substitute for Senate resolution No. 413, and ask that it be read, lie on the table, and be printed.

The resolution (S. Res. 413) was read, ordered to lie on the table, and to be printed, as follows:

Resolved, That the system of direct legislation, such as the optional initiative and referendum adopted by Oklahoma, Oregon, California, Washington, Arizona, Utah, Colorado, Montana, North Dakota, South Dakota, Missouri, Arkansas, Nebraska, Wisconsin, Ohio, and Maine, is in harmony with and makes more effective the representative system and the principle of the sovereignty of the people upon which this Republic was founded and is not in conflict with the republican form of government guaranteed by the Constitution.

Mr. OWEN. I desire to give notice that on Monday next, after the disposition of the regular routine morning business, I shall address the Senate upon the resolution.

EULOGIES ON THE LATE VICE PRESIDENT.

Mr. SMOOT submitted the following concurrent resolution (S. Con. Res. 41), which was read, considered by unanimous consent, and agreed to:

Resolved by the Senate (the House of Representatives concurring), That there shall be printed and bound, under the direction of the Joint Committee on Printing, 14,100 copies of the proceedings and the eulogies delivered in Congress on James Schoolcraft Sherman, late Vice President of the United States, with illustration, of which 4,000 copies shall be for the use of the Senate, 8,000 copies for the use of the House of Representatives, 2,000 copies for the use of the Senators and Representatives of the State of New York, and 100 copies, bound in full morocco, for the use of Mrs. James Schoolcraft Sherman: *Provided*, That there shall be included in such publication the proclamation of the President and the proceedings in the Supreme Court of the United States upon the death of Vice President Sherman, and an account of the funeral services at Utica, N. Y.

CONDITIONS IN THE CITY OF MEXICO.

Mr. ASHURST. I submit a resolution and ask that it lie on the table and be printed.

The resolution (S. Res. 464) was read and ordered to lie on the table and to be printed, as follows:

Whereas according to the best information obtainable by the American people and by the Senate of the United States, American citizens now residents of the City of Mexico, capital of the Republic of Mexico, have been compelled to take refuge within the American Embassy, to escape the dangers of a warfare now being conducted in the Republic of Mexico;

Whereas Americans and other noncombatants have been wounded and killed while within the shelter of their own homes and while seeking safety in the residences of the official representatives of their respective Governments; and

Whereas the American Embassy has been under fire and the life of the American ambassador and his family and other American citizens gathered there for safety have been and are jeopardized, and assaults have been made upon official representatives of the Government of the United States; and

Whereas official communications between the American Government and its diplomatic representatives in the city of Mexico are either censored or garbled by and under authority of the Government of Mexico, and foreign Governments appear to look to the Government of the United States to protect life and property and maintain a state of law and order; and

Whereas the President of the United States is quoted as having stated that Congress must share with him whatever action may be taken with regard to the present deplorable state of affairs in Mexico: Therefore be it

Resolved, That the President of the United States be, and he is hereby, requested, if not incompatible with the public interests, to transmit to the Senate full and complete copies of all correspondence, cables, telegrams, and other communications received by him or by the Department of State or by the Department of the Navy relative to conditions in the City of Mexico, and copies of all instructions sent to the American diplomatic representatives and officers of the Army and Navy in command of vessels or military forces that have been placed under orders and directed to hold themselves in readiness to protect American interests, copies of such communications and orders being necessary to the end that Congress may properly assume whatever responsibility the President at any time may believe Congress should share with him.

CONDITIONS IN PAINT CREEK, W. VA., COAL FIELDS.

Mr. BORAH submitted the following resolution (S. Res. 463), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That a committee of three Members of the Senate be appointed by the President of the Senate to make a thorough and complete investigation of the conditions existing in the Paint Creek coal fields of West Virginia, for the purpose of ascertaining—

1. Whether or not a system of peonage is maintained in said coal fields.

2. Whether or not access to post offices is prevented; and if so, by whom.

3. Whether or not our treaty obligations with other countries are being violated; and if so, by whom.

4. If any or all of those conditions exist, the causes leading up to such conditions.

5. Whether or not the Commissioner of Labor or any other official or officials of the Government can be of service in adjusting such strike.

6. Whether or not parties are being convicted and punished in violation of the laws of the United States.

Said committee, or any subcommittee thereof, is hereby empowered to sit and act during the session or recess of Congress, or of either House thereof, at such time and place as it may deem necessary; to require, by subpœna or otherwise, the attendance of witnesses and the production of papers, books, and documents; to employ stenographers to take and make a record of all evidence taken and received by the committee, and keep a record of its proceedings; to have such evidence,

record, and other matter required by the committee printed and suitably bound; and to employ such assistance as may be deemed necessary. The chairman of the committee, or any member thereof, may administer oaths to witnesses. Subpœnas for witnesses shall be issued under the signature of the chairman of the committee or subcommittee thereof. The claim that any testimony or evidence given may tend to incriminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceedings, except in prosecuting for perjury committed in giving such testimony. Every person who, having been summoned as a witness by authority of said committee or any subcommittee thereof, willfully makes default, or who, having appeared, refuses to answer any questions pertinent to the investigation herein authorized, shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than $1,000 nor less than $100 and imprisoned in a common jail for not more than one year nor less than one month, as provided in section 102 of the Revised Statutes of the United States.

The expenses thereof shall be paid from the contingent fund of the Senate on vouchers ordered by said committee, signed by the chairman thereof, and approved by the Committee on Contingent Expenses.

EIGHT-HOUR LAW.

Mr. BORAH. I ask the Chair to lay before the Senate the action of the House on the disagreeing votes on House bill 18787.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives agreeing to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 18787) relating to the limitation of the hours of daily service of laborers and mechanics employed upon public works of the United States and of the District of Columbia, and of all persons employed in constructing, maintaining, or improving a river or harbor of the United States and of the District of Columbia.

Mr. BORAH. I ask that the Senate concur——

Mr. BURTON. I ask that the matter may go over.

The PRESIDENT pro tempore. It will go over.

Mr. SMOOT. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 58 minutes p. m., Monday, February 17) the Senate adjourned until to-morrow, Tuesday, February 18, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

MONDAY, *February 17, 1913.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We bless Thee, Infinite Spirit, our heavenly Father, that we may touch hearts with Thee and feel the influx of Thy spirit mingling with our spirit and thus consciously renew our relationship with Thee, be strengthened, purified, ennobled, and led forward to new victories, new achievements in the work Thou hast given us to do. For Thine is the kingdom and the power and the glory forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

INCOME TAX.

The SPEAKER. The Chair will announce to the House, to save the trouble of reading a long document, that he has received a communication from the secretary of state of Wyoming announcing that the legislature of that State has ratified the income-tax amendment.

The communication is as follows:

THE STATE OF WYOMING,
OFFICE OF THE SECRETARY OF STATE.

UNITED STATES OF AMERICA, *State of Wyoming:*

I, Frank L. Houx, secretary of state of the State of Wyoming, do hereby certify that the following copy of senate joint resolution No. 2, adopted by the Legislature of the State of Wyoming, has been carefully compared with the original, filed in this office on the 6th day of February, A. D. 1913, and is a full, true, and correct copy thereof:

Senate joint resolution ratifying an amendment to the Constitution of the United States of America granting power to Congress to levy a tax on incomes.

Whereas both Houses of the Sixty-first Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following propositon to amend the Constitution of the United States of America in the following words, to wit:

A joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed by an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution, namely:

"ART. XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionments among the several States and without regard to any census or enumeration":

Therefore be it

Resolved by the senate of the State of Wyoming (the house of representatives concurring), That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the Legislature of the State of Wyoming.

That certified copies of this preamble and joint resolution be forwarded by the secretary of state of this State to the President of the United States, Secretary of State of the United States, to the Presiding Officer of the United States Senate, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative of the United States, and to each Senator and Representative in Congress from the State of Wyoming.

By the president:

BIRNEY H. SAGE.

By the speaker:

MARTIN L. PRATT.

10.52 a. m., February 3, 1913.

JOSEPH M. CAREY, *Governor.*

In witness whereof I have hereunto set my hand and affixed the great seal of the State of Wyoming.

Done at Cheyenne, the capital, this 10th day of February, A. D. 1913.

[SEAL.]

FRANK L. HOUX,
Secretary of State.

EXTENSION OF REMARKS.

Mr. SHARP. Mr. Speaker, I ask unanimous consent that there may be printed in the RECORD an article by Mr. Alfred W. Lawson, of New York, the editor and proprietor of the monthly magazine Aircraft. This article upon the subject of aviation is very interesting and illuminating and contains in it much that is of valuable information. I deem this request not inappropriate at this time, inasmuch as the subject of aerial navigation as it concerns a means of national defense and attack, will be, I believe, one of the features of the forthcoming naval appropriation bill. Other bills involving different phases of this subject are also in course of preparation and will claim our attention during the next Congress. While the zeal of the author has led him to make some recommendations with which we may not all fully agree, yet I believe his suggestions are timely and of much value, not only to Congress but to the country at large. Indeed, I believe Congress is fast coming to appreciate the importance of this new field of enterprise in its varied possibilities.

The SPEAKER. The gentleman from Ohio asks unanimous consent to print in the CONGRESSIONAL RECORD an article by Mr. Alfred W. Lawson on the subject of flying machines.

Mr. MANN. Mr. Speaker, reserving the right to object, how long is this article?

Mr. SHARP. I should think it would take probably three columns of the CONGRESSIONAL RECORD. I have made no estimate.

Mr. MANN. If the gentleman will make his request that he have leave to extend his remarks in the RECORD by printing this article, I shall have no objection.

The SPEAKER. The gentleman from Ohio asks unanimous consent to extend his remarks in the RECORD as indicated. Is there objection? [After a pause.] The Chair hears none.

The article is as follows:

A RECOMMENDATION TO CONGRESS.

(By Alfred W. Lawson.)

To the Members of the House of Representatives and the United States Senate:

As a private citizen I beg leave to address you, both individually and collectively, upon a subject which I consider of vital importance to this glorious Nation, upon a subject which, although new and little understood at present, must within a very short period take its place at the very head of human interest and progress. I allude to air craft and air navigation.

I want to point out to you a few facts in connection with what has already been accomplished in this new method of transportation and what reasonable development may be expected in the immediate future, and I want to show you with facts and figures and argument just why it becomes necessary at this time for Congress to give this subject most careful consideration and bring to bear upon it that rare good judgment and foresight which anticipates and avoids difficulties with preparedness, and thereby demonstrates the wisdom that distinguishes the preeminent minority from the eminent majority. In offering this address, gentlemen, I fully recognize the great number and variety of present-day problems you have to occupy your time, and, of course, it would be unreasonable to expect that you had given any especial attention to the development or the possibilities of air transportation during its embryo state; nor could you have been expected to do so when taking into consideration that the majority of our American publicists have seen fit to only spread broadcast the gruesome and sensational side of the subject, and thereby harass American progress, in contradistinction to the attitude of the publicists of European countries, who endeavor to educate their people in the scientific and industrial value of the movement.

So I address you, gentlemen, as one who has given much time and thought to this great subject—a specialist in this line, you might say—and give you the benefit of five years' constant investigation of the matter, summed up in the fewest possible words and relating only to that which concerns the people of the United States the most. I address you as one who knows.

I speak not as the elastic dreamer, who overleaps at a bound all the obstacles which naturally block up the passageway of progress and which require years to remove, nor as the habitual doubter who, with eyes in the back of his head, can see nothing to the fore, and naturally scouts and denies the possibilities of progress of any nature whatsoever.

I speak as one who has studied closely the lines of air-craft development, its possibilities and probabilities, and calculated conservatively regarding the time necessary to overcome certain mechanical and human obstacles while attaining its natural and healthy growth. By knowing the facts and carefully weighing the theories I have obtained a perspective from which my views on the subject should be as clear